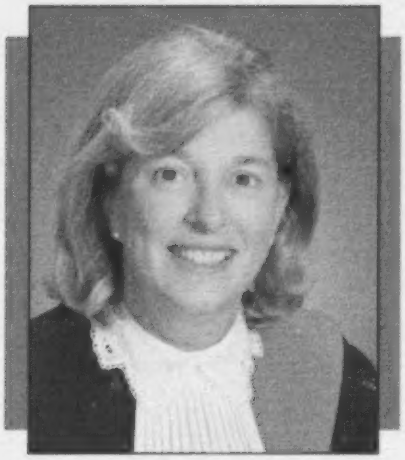
JPRC

SIXTH
ANNUAL REPORT

2012

JUSTICES OF THE PEACE
REVIEW COUNCIL

ONTARIO



The Honourable Annemarie E. Bonkalo

CHIEF JUSTICE

ONTARIO COURT OF JUSTICE

Chair, Justices of the Peace Review Council

JUSTICES OF THE PEACE REVIEW COUNCIL

March 10, 2014

The Honourable John Gerretsen
Attorney General for the Province of Ontario
720 Bay Street, 11th Floor
Toronto, Ontario
M5G 2K1

Dear Minister:

It is my pleasure to submit the Sixth Annual Report of the Justices of the Peace Review Council concerning its operations throughout 2012, in accordance with subsection 9(7) of the *Justices of the Peace Act*.

The period of time covered by this Annual Report is from January 1, 2012 to December 31, 2012.

Respectfully submitted,

Annemarie E. Bonkalo
Chief Justice
Ontario Court of Justice

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INTRODUCTION

The period of time covered by this Annual Report is from January 1, 2012 to December 31, 2012. This report is the Sixth Annual Report on the work of the Justices of the Peace Review Council.

Justices of the peace play an important role in the administration of justice in Ontario. They are appointed by the Province of Ontario and have their duties assigned by a Regional Senior Justice or a Regional Senior Justice of the Peace. They routinely conduct trials under the *Provincial Offences Act* and preside over bail hearings. They also perform a number of other judicial functions, such as issuing search warrants. Justices of the peace do difficult, important work in the justice system. A justice of the peace may be the only judicial officer that a citizen will encounter in his or her lifetime.

The Justices of the Peace Review Council is an independent body established by the Province of Ontario under the *Justices of the Peace Act* with a mandate to receive and investigate complaints about justices of the peace and to fulfill other functions as described in this report. The Review Council does not have the power to interfere with or change a decision made by a justice of the peace. Those are matters to be pursued through other legal remedies before the courts.

The *Act* provides for the Council to make an Annual Report to the Attorney General on its affairs, including case summaries about complaints. The report may not include information that identifies a justice of the peace, a complainant or a witness unless a public hearing has occurred.

This Sixth Annual Report of the Review Council provides information on its membership, its functions and the work of the Council during 2012. The Annual Report also includes information on the procedures used to address complaints. Information is also included on applications for approval to engage in extra-remunerative activities, although names of applicants are confidential.

The Review Council had jurisdiction over approximately 394 provincially-appointed justices of the peace, full-time and part-time and *per diem,* during the period of time covered by this Annual Report. During 2012, the Council received 33 new complaints about justices of the peace, and carried over 56 from previous years. Information about the 65 complaint files that were completed and closed in 2012 is included in this Report.

We invite you to find out more about the Council by reading this Annual Report, and by visiting its website at **www.ontariocourts.on.ca/jprc/en/.** On the website, you will find the Council's current policies and procedures; updates about any public hearings that are in progress or that have been completed after this Report was prepared; the *Principles of Judicial Office;* the Education Plan; and links to the governing legislation.

1. COMPOSITION AND TERMS OF APPOINTMENT

The Justices of the Peace Review Council is an independent body established under the *Justices of the Peace Act.* The Review Council has a number of functions which are described in this section, including the review and investigation of complaints about the conduct of justices of the peace.

The Review Council includes judges, justices of the peace, a lawyer and four community representatives:

- the Chief Justice of the Ontario Court of Justice, or another judge of the Ontario Court of Justice designated by the Chief Justice;
- the Associate Chief Justice Co-ordinator of Justices of the Peace;
- three justices of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice;
- one regional senior justice of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- a lawyer appointed by the Attorney General from a list of three names submitted to the Attorney General by the Law Society of Upper Canada; and,
- four persons appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General.

In the appointment of community members, the importance is recognized of reflecting, in the composition of the Review Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance.

When the Council was established in its current form in 2007, to provide for staggered terms among the members of the Council, initially the lawyer and one community person were appointed for a six-year term, one community person for a two-year term and the remaining two community members for four-year terms. After those members complete their terms, lawyer and community members who are appointed to the Council hold office for four-year terms and are eligible for reappointment. Judicial members on the Council are appointed by the Chief Justice of the Ontario Court of Justice.

2. MEMBERS

The membership of the Review Council in the year covered by this report (January 1, 2012 to December 31, 2012) was as follows:

Judicial Members:

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Annemarie E. Bonkalo ....(Toronto)

ASSOCIATE CHIEF JUSTICE CO-ORDINATOR OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

The Honourable John A. Payne.. (Durham/Toronto)

THREE JUSTICES OF THE PEACE APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

Senior Justice of the Peace Cornelia Mews.................................. (Newmarket/Toronto)

His Worship Warren Ralph ....(Toronto)

Her Worship Louise Rozon.. (Cornwall)

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TWO JUDGES OF THE ONTARIO COURT OF JUSTICE APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

The Honourable Justice Ralph E. W. Carr .... (Timmins)

The Honourable Justice Charles H. Vaillancourt .... (Toronto)

REGIONAL SENIOR JUSTICE OF THE PEACE APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

Regional Senior Justice of the Peace Kathleen M. Bryant .... (Sault Ste. Marie)

Lawyer Member:

Ms. S. Margot Blight .... (Toronto)
Borden Ladner Gervais LLP

Community Members:

Dr. Emir Crowne .... (Windsor)
Associate Professor, Faculty of Law, University of Windsor

Ms. Cherie A. Daniel .... (Toronto)
Lawyer

Dr. Michael S. Phillips .... (Gormley)
Consultant, Mental Health and Justice

Mr. Steven G. Silver .... (Gananoque)
Retired, Chief Administrative Officer, United Counties of Leeds & Grenville

Members – Temporary:

Subsection 8(10) of the *Justices of the Peace Act* permits the Chief Justice of the Ontario Court of Justice to appoint a judge or a justice of the peace to be a temporary member of the Justices of the Peace Review Council of a complaints committee or hearing panel where it is necessary in order to meet the requirements of the *Act*. During the period covered by this report, the following members were temporary members:

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The Honourable Justice Guy F. DeMarco .... (Windsor)

His Worship Maurice Hudson ....(Brampton)

3. ADMINISTRATIVE INFORMATION

Separate office space adjacent to the Office of the Chief Justice in downtown Toronto is utilized by both the Ontario Judicial Council and the Justices of the Peace Review Council. The proximity of the Councils' office to the Office of the Chief Justice permits both Councils to make use of financial, human resources, and technology support staff, as needed, and computer systems without the need of acquiring a large staff.

Councils' offices are used for meetings of both Councils and their members, and as needed for meetings with judicial officers that may result as part of the disposition of complaints. The Councils have a shared telephone reception and fax number. They share a toll-free number for the use of members of the public across the province of Ontario and a toll-free number for persons using TTY/teletypewriter machines.

During the period covered by this report, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a Registrar, two Assistant Registrars and an Administrative Secretary:

Ms. Marilyn E. King, LL.B. – *Registrar*

Mr. Thomas A. Glassford – *Assistant Registrar*

Ms. Ana M. Brigido – *Assistant Registrar*

Ms. Janice Cheong – *Administrative Secretary*

4. FUNCTIONS OF THE REVIEW COUNCIL

The *Justices of the Peace Act* provides that the functions of the Review Council are:

- to establish complaints committees from amongst its members to receive and investigate complaints about justices of the peace, and decide upon dispositions under section 11(15);

- to hold hearings under section 11.1 when hearings are ordered by complaints committees pursuant to section 11(15);
- to review and approve standards of conduct;
- to consider applications under section 5.2 for the accommodation of needs;
- to deal with continuing education plans; and,
- to decide whether a justice of the peace who applies for approval to engage in other remunerative work may do so.

The Review Council does not have the power to interfere with or change a decision made by a justice of the peace. If a person believes that a justice of the peace made an error in assessing evidence or in making a decision on any of the issues, the proper way to proceed is through other legal remedies before the courts, such as an appeal.

Under section 10(1) of the *Justices of the Peace Act,* the Review Council may establish rules of procedure for complaints committees and for hearing panels and the Review Council must make the rules available to the public. The Review Council has established Procedures containing rules for the complaints process which are posted on its website at the link for "Policies and Procedures" at:
www.ontariocourts.ca/ocj/jprc/policies-and-procedures/procedure/.

During 2012, the Council continued to refine and develop its Procedures and policies.

The Review Council considered that there may be exceptional circumstances where information communicated by a complainant to the Review Council or its staff may disclose a risk of harm to a person and/or property. The Review Council decided that in such circumstances, an exception to the general procedural provisions of confidentiality of information and documents was needed to address circumstances where there may be imminent safety concerns. The Procedures were amended to provide an exception for communications with the complainant(s) and/or the disposition letter in a file to be released to the police and/or the Justice Sector Security Office and/or for use in any criminal proceeding if the communication(s) could constituted a criminal offence and the communications may be relevant to determine whether there is a need to prevent harm to a person and/or property. The Justice Sector Security Office is a small unit that helps ensure the safety and security of justice officials in partnership with a team of the Ontario Provincial Police.

A copy of the Council's current procedures for the complaints process that incorporates the amendments made during 2012 is posted on the Review Council's website under the link "Policies and Procedures"
www.ontariocourts.ca/ocj/jprc/policies-and-procedures/ procedure/.

5. EDUCATION PLAN

The Associate Chief Justice Co-ordinator of Justices of the Peace of the Ontario Court of Justice is required, by section 14 of the *Justices of the Peace Act,* to establish, implement and make public a plan for the continuing judicial education of justices of the peace. The education plan must be approved by the Justices of the Peace Review Council. In 2007, a continuing education plan was developed by the Associate Chief Justice Co-ordinator of Justices of the Peace in conjunction with the Advisory Committee on Education. The Committee includes the Associate Chief Justice Co-ordinator of Justices of the Peace as Chair *(ex officio)* and justices of the peace nominated by the Associate Chief Justice Co-ordinator of Justices of the Peace and by the Association of Justices of the Peace of Ontario. The continuing education plan was revised and approved by the Justices of the Peace Review Council on November 28, 2008. In 2012, the Council was informed by the Associate Chief Justice-Coordinator of Justices of the Peace that the Court had retained Ms. Susan Lightstone to do a review of justice of the peace education programs and provide the Court with a report on judicial education. When it is completed, the Review Council will be asked to consider any changes to the Justices of the Peace Education Plan. A copy of the continuing education plan can be found on the Council's website under the link "Education Plan" at
www.ontariocourts.ca/ocj/jprc/education-plan/.

6. STANDARDS OF CONDUCT

The Associate Chief Justice Co-ordinator of Justices of the Peace may, under section 13(1) of the *Justices of the Peace Act,* establish standards of conduct for justices of the peace and a plan for bringing the standards into effect and must implement the standards and plan when they have been reviewed and approved by the Review Council.

The *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* were approved by the Justices of the Peace Review Council on December 7, 2007. The principles set out standards of excellence and integrity to which justices of the peace subscribe. These principles are not exhaustive. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in their conduct generally. The principles are designed to be advisory in nature and are not directly related to any specific disciplinary process.

A copy of the *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* is included as Appendix C in this Annual Report and can be found on the Council's website under the link for "Principles of Judicial Office" at:
www.ontariocourts.ca/ocj/jprc/principles-of-judicial-office/.

7. EXTRA-REMUNERATIVE WORK

Under section 19 of the *Justices of the Peace Act*, all justices of the peace are required to seek the written approval of the Review Council before accepting or engaging in any extra-remunerative work. In 1997, the former Justices of the Peace Review Council approved a policy regarding extra-remunerative work in which justices of the peace may engage. On November 23, 2007, the newly constituted Review Council approved the policy regarding other remunerative work.

Applications received from justices of the peace to engage in other remunerative work are considered in accordance with the Council's policy. The policy applies to all justices of the peace, full-time and part-time and *per diem*. The policy sets out criteria that are used in assessing applications including:

- whether there is an actual, or perceived, conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought;
- whether the nature of the activity for which the justice of the peace seeks approval will present an intrusive demand on the time, availability or energy of the justice of the peace and his or her ability to properly perform the judicial duties assigned; and,

- whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

In 2010, the Council determined that in considering applications to engage in extra-remunerative work, it would look at two aspects in relation to remuneration associated with the work. Firstly, the Council considers whether the work gives rise to any remuneration to the applicant justice of the peace. Secondly, the Council considers that a justice of the peace is engaged in extra-remunerative work when that justice of the peace is a party to someone else's remunerative work. Once the Council has established whether there is any remuneration, the policy and criteria set out in the Council's extra-remunerative policy are considered. The *Policy of the Justices of the Peace Review Council Re Extra-Remunerative Work* was amended to reflect the Council's decision.

One criterion to be considered by the Council in considering applications is whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality (paragraph 6(c) of the *Policy Re Extra-Remunerative Work).* The Council has considered how that criterion should be applied and determined that it must be understood in the context of the public policy encapsulated in the legislative framework set out in the *Justices of the Peace Act* R.S.O. 1990, c. J.4, as amended and, in particular, in view of the amendments that resulted from the *Access to Justice Act,* 2006, S.O. 2006, c. 21. The Council noted that the legislative amendments brought about a comprehensive reform intended to strengthen public confidence in a professional bench and in the justice system.

Having carefully considered the public policy underlying the current legislative framework, the objectives of the amendments underlying the *Access to Justice Act,* 2006, and the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice,* the Review Council determined that it would in general be unseemly for full-time presiding justices of the peace to be engaged in commercial extra-remunerative work. The *Policy Re Extra-Remunerative Work* was amended to reflect the Council's decision.

The Review Council has approved some applications to extra-remunerative work by full-time presiding justices of the peace on an exceptional basis in limited circumstances where the activity was primarily non-commercial and had other intrinsic value from an educational, patriotic, religious or creative standpoint. In accordance with the Council's policy and procedure, an applicant who seeks approval to engage in commercial activity must address the issue of why the application for extra-remunerative work should be approved as an exception to the general policy that full-time presiding justices of the peace should not engage in extra-remunerative work that is commercial in nature.

The *Policy on Extra-Remunerative Work* is included as Appendix B in this Annual Report. The most recent version is posted on the Council's website under the link "Policies and Procedures" at: **www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/.**

Summary of Extra-Remunerative Files Closed in 2012

During 2012, the Council received three applications for approval to engage in extra-remunerative work and completed its consideration of all three applications. Case summaries for the extra-remunerative files that were completed in 2012 can be found at Appendix B in this Annual Report.

8. COMMUNICATIONS

The website of the Justices of the Peace Review Council includes information about the Council, including the most current version of the policies and procedures, as well as information about hearings that are underway or that have been completed. Copies of "Judicial Inquiry Proceedings" held under the former legislation and "Reasons for Decision" from any public hearings held under the current legislation are posted on the website when released. Each Annual Report of the Council is also available on the website after it has been tabled in the legislature by the Attorney General.

The address of the Council's website is: **http://www.ontariocourts.ca/ocj/jprc/.**

A brochure to inform the public about the process to make complaints about judges and justices of the peace is available in hard copy at courthouses or by contacting the Council's office, and electronically on the website at **www.ontariocourts.ca/ocj/conduct/do-you-have-a-complaint/.** The brochure, "Do You Have a Complaint?" provides information on what a justice of the peace does, on how to tell whether the presiding judicial officer is a judge or a justice of the peace, and on how to make a complaint about conduct.

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9. ACCOMMODATION OF NEEDS ARISING FROM A DISABILITY

A justice of the peace who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Council under section 5.2 of the *Justices of the Peace Act* for an order that such needs be accommodated.

The current procedure that governs such applications is included in the Council's Procedure which is posted on the website at:
http://www.ontariocourts.ca/ocj/jprc/accessibility-and-accommodation/

During 2012, no applications for accommodation were decided upon by the Council.

10. OVERVIEW OF THE COMPLAINTS PROCESS

What initiates a review by the Review Council?

Any person may make a complaint to the Review Council about the conduct of a justice of the peace. Complaints must be made in writing. The governing legislation and the principles of natural justice do not provide for the Review Council to act on anonymous complaints or to initiate inquiries into the conduct of a judicial officer. Rather, an investigation conducted by the Review Council must be in response to specific allegations submitted by a complainant. Most of the complaints received by the Justices of the Peace Review Council are received from members of the public.

Does the Council have the legal authority to consider the complaint?

The Review Council has a legislative mandate to review complaints about the **conduct** of justices of the peace. The Council has no authority to review **decisions** of justices of the peace to determine whether there were any errors in how the issues were determined or how conclusions were drawn. If a party involved in a court case thinks that a justice of the peace reached the wrong decision in the case, he or she has legal remedies through the courts. Only a court can change the original decision of a justice of the peace.

All correspondence is reviewed to determine whether or not a complaint is within the jurisdiction of the Review Council. In those cases where the complaint may be within the jurisdiction of the Review Council, a complaint file is opened and a letter of acknowledgement is sent to the complainant, usually within a week of his or her letter being received by the Council.

If the complainant expresses dissatisfaction with a decision that has been made by a justice of the peace, the letter of acknowledgement advises the complainant that the Council has no power to change a decision made by a justice of the peace. In such cases, the complainant is advised that he or she may wish to consult legal counsel to determine what, if any, remedies may be available through the courts.

If an individual is complaining about his/her lawyer or a Crown Attorney, or another office, the complainant is generally referred to the appropriate agency or authorities.

What happens in the complaints process?

The *Justices of the Peace Act* and the procedures that have been established by the Council provide the current framework for addressing complaints about justices of the peace. If a complaint is ordered to a public hearing, certain provisions of the *Statutory Powers Procedure Act* also apply. The complaints procedure is outlined below. The current procedures are posted on the Council's website at:
www.ontariocourts.ca/ocj/jprc/policies-and-procedures/procedure/.

Preliminary Investigation and Review

As soon as possible after receiving a complaint about the conduct of a justice of the peace, the office of the Council will acknowledge receipt of the complaint. If the complaint raised allegations of conduct about a justice of the peace who is presiding over a court proceeding, the Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This will ensure that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters.

If there is no on-going court proceeding, a complaints committee of the Council will be assigned to investigate the complaint. Members of the Council serve on complaints committees on a rotating basis. Each complaints committee is composed of: a provincially appointed judge who acts as chair; a justice of the peace; and, either a community member or a lawyer member. Complaints are not generally assigned to members from the same region where the justice of the peace who is the subject of the complaint presides. This avoids any risk of or perception of bias or conflict of interest between a member of Council and the justice of the peace.

Except for hearings ordered under section 11(15)(c) of the *Justices of the Peace Act* to consider complaints about specific justices of the peace, meetings and proceedings of the Review Council are not held in public. Section 11(8) of the *Act* requires that investigations by the Review Council must be conducted in private. The legislative framework recognizes the need to safeguard judicial independence while simultaneously ensuring judicial accountability and public confidence in the administration of justice.

If the complaint arose from a court proceeding, usually a transcript of the court hearing is ordered to be reviewed by the members of the complaints committee. An audio recording, if available, may also be ordered and reviewed. In some cases, the committee may find that it is necessary to conduct further investigation in the form of having witnesses interviewed. An external lawyer may be retained, pursuant to section 8(15) of the *Act*, on behalf of the Review Council to interview witnesses and provide a report to the investigating complaints committee.

The complaints committee will determine whether or not a response to the complaint should be invited from the justice of the peace in question. If a response is invited from the justice of the peace, the letter sent from the Review Council inviting a response will enclose a copy of the complaint, the transcript (if any) and all of the relevant materials considered by the committee. The justice of the peace may seek independent legal advice or assistance before responding. The justice of the peace will also be invited to listen to the audio recording, if it has been reviewed by the committee.

Section 11(15) of the *Justices of the Peace Act* gives the complaints committee the authority to dismiss a complaint after reviewing the complaint where, in the opinion of the committee: it is frivolous or an abuse of process; it falls outside the Council's jurisdiction (e.g. because it is a complaint about the exercise of judicial discretion); it does not include an allegation of judicial misconduct; the allegation is unproven; or, the misconduct does not rise to the level of misconduct that requires further action on the part of the Council.

Interim Recommendations

The investigating complaints committee will consider whether the allegation(s) warrants making an interim recommendation pending the final disposition of a complaint. Under section 11(11) of the *Act*, an interim recommendation for non-assignment of work or re-assignment to work at another court location may be made to the Regional Senior Justice appointed for the region to which the justice of the peace is assigned. The Regional Senior Justice may decide not to assign work to the justice of the peace until the final disposition (but he or she will continue to be paid); or, with the consent of the justice of the peace, may re-assign him or her to another location until the disposition of the complaint. It is within the discretion of the Regional Senior Justice as to whether he or she decides to act upon the recommendation from a complaints committee.

The Review Council has approved the following criteria in the procedures to guide complaints committees as to when an interim recommendation should be made:

- where the complaint arises out of a working relationship between the complainant and the justice of the peace and the complainant and the justice of the peace both work at the same court location;
- where allowing the justice of the peace to continue to preside would likely bring the administration of justice into disrepute;
- where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies;
- where it is evident to the complaints committee that a justice of the peace is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated.

Where a complaints committee proposes to recommend temporarily not assigning work or re-assigning a justice of the peace to work at a different court location, it may give the justice of the peace an opportunity to be heard on that issue in writing before making its decision. Particulars of the factors upon which the complaints committee's recommendations are based are provided to the Regional Senior Judge to assist the Regional Senior Judge in making his or her decision, and to the justice of the peace to provide him or her with notice of the complaint and the complaints committee's recommendation.

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Of the complaint files that were completed by the Council during 2012, one complaints committee made a recommendation that one justice of the peace be re-assigned to a location other than where the complaint arose. The Regional Senior Justice agreed with the recommendation.

Dispositions of the Complaints Committee

When the investigation is completed, pursuant to section 11(15) of the *Act*, the complaints committee will do one of the following:

a) dismiss the complaint if it is frivolous, an abuse of process or outside the jurisdiction of the complaints committee;

b) invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;

c) order that a formal hearing into the complaint be held by a hearing panel; or,

d) refer the complaint to the Chief Justice of the Ontario Court of Justice.

The complaints committee reports to the Review Council on its decision and, except where it orders a formal hearing, does not identify the complainant or the justice of the peace who is the subject of the complaint in its report.

Notification of Disposition

After the complaints process is completed, the Review Council communicates its decision to the person who made the complaint and, in most cases, to the justice of the peace. A justice of the peace may waive notice of the complaint if it is being dismissed and no response was invited by the Council. In accordance with the Procedures of the Review Council, if the Review Council decides to dismiss the complaint, it will provide brief reasons.

Public Hearing Under section 11.1

When the complaints committee orders a public hearing, under section 11.1(1) of the *Act*, the Chief Justice of the Ontario Court of Justice, who is also the Chair of the Review Council, establishes a three-member hearing panel from among the members of the Council, composed of: a provincially appointed judge who chairs the panel; a justice of the peace; and, a member who is a judge, a lawyer or a member of the public. Complaints committee members who participated in the investigation of the complaint do not participate in its review by a hearing panel.

The legislation provides for judicial members to be appointed as temporary members of the Council to ensure that the three members of the hearing panel have not been involved in earlier stages of reviewing the complaint. The Chief Justice of the Ontario Court of Justice may appoint a judge or a justice of the peace who is not a member of the Review Council to be a temporary member of a hearing panel where necessary to form each quorum to meet the requirements of the *Act*.

By the end of the investigation and hearing process, all decisions regarding complaints made to the Justices of the Peace Council will have been considered and reviewed by a total of six members of Council – three members of the complaints committee and three members of the hearing panel.

The Review Council engages legal counsel, called Presenting Counsel, for the purposes of preparing and presenting the case about the justice of the peace. The legal counsel engaged by the Review Council operates independently of the Review Council. The duty of legal counsel engaged to act as Presenting Counsel is not to seek a particular order against a justice of the peace, but to see that the complaint about the justice of the peace is evaluated fairly and dispassionately to the end of achieving a just result.

The justice of the peace has the right to be represented by counsel, or to act on his or her own behalf in any hearing under this procedure.

The *Statutory Powers Procedure Act*, with some exceptions, applies to hearings into complaints. Persons may be required, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the panel which are relevant to the subject matter of the hearing and admissible at the hearing.

Public Hearing Unless Ordered Private

A section 11.1 hearing into a complaint is public unless the Review Council determines, in accordance with criteria established under the *Statutory Powers Procedure Act*, that matters involving public security may be disclosed; or, intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure of such matters, in the interests of any person affected or in the public interest, outweighs the desirability of following the principle that the hearing be open to the public.

In certain circumstances where a complaint involves allegations of sexual misconduct or sexual harassment, the Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a witness who testifies to having been the victim of the conduct. If a complaint involves allegations of sexual misconduct or sexual harassment, the hearing panel will, at the request of the complainant or of a witness who testifies to having been the victim of such conduct by the justice of the peace, prohibit the publication of information that might identify the complainant or the witness, as the case may be.

Dispositions after section 11.1 Hearing

After hearing the evidence, under section 11.1(10) of the *Justices of the Peace Act*, the hearing panel of the Council may dismiss the complaint, with or without a finding that it is unfounded or, if it upholds the complaint, it may decide upon any one of the following sanctions singly or in combination:

- warn the justice of the peace;
- reprimand the justice of the peace;
- order the justice of the peace to apologize to the complainant or to any other person;
- order the justice of the peace to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- suspend the justice of the peace with pay, for any period; or,
- suspend the justice of the peace without pay, but with benefits, for a period up to thirty days.

Removal from Office

Following the hearing, the Review Council may make a recommendation to the Attorney General that the justice of the peace be removed from office. This sanction stands alone and cannot be combined with any other sanction. A justice of the peace may be removed from office only if a hearing panel of the Review Council, after a hearing under section 11.1, recommends to the Attorney General under section 11.2 that the justice of the peace be removed on the ground of:

- he or she has become incapacitated or disabled from the execution of his or her office by reason of inability to perform the essential duties of the office because of a disability and, in the circumstances, accommodation of his or her needs would not remedy the inability, or could not be made because it would impose undue hardship to meet those needs;
- conduct that is incompatible with the execution of the office; or
- failure to perform the duties of his or her office.

Only the Lieutenant Governor in Council may act upon the recommendation and remove the justice of the peace from office.

Recommendation of Compensation for Legal Costs

When the Justices of the Peace Review Council has dealt with a complaint, section 11(16) of the *Justices of the Peace Act* makes provision for a justice of the peace to request that a complaints committee recommend to the Attorney General that he or she should be compensated for all or part of the costs of legal services incurred in connection with the investigation. Such a request would generally be submitted to the Council after the complaints process has been completed, along with a copy of the statement of account of legal services to support the request. Similarly, section 11.1(17) allows a hearing panel to recommend compensation for all or part of the cost of legal services incurred in connection with a hearing.

In 2012, fifteen recommendations for compensation were made by a complaints committee or hearing panel to the Attorney General that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the investigation or hearing of the complaints.

Legislation

The current legislative provisions of the *Justices of the Peace Act* concerning the Justices of the Peace Review Council are available on the government's e-laws website at **www.e-laws.gov.on.ca.** The website contains a database of Ontario's current and historical statutes and regulations.

11. SUMMARY OF COMPLAINTS CLOSED IN 2012

Overview

The Justices of the Peace Review Council carried forward 56 complaints to 2012 from previous years. During 2012, 33 new complaint files were opened with the Review Council. Including cases carried into 2012 from previous years, the total number of files open during 2012 was 89. Of the 89 open files in 2012, 65 files were completed and closed before December 31, 2012.

Of the 65 files that were closed, 15 were opened in 2012. Forty were from 2011 and ten were from 2010.

Twenty-four complaints were still ongoing at the end of 2012 and were carried over into 2013. Of the 24 files carried over into 2013, 18 were from 2012, five were from 2011 and one was from 2009. The one file from 2009 was a lengthy complex matter that was ordered to a hearing as reported in the 2011 Annual Report. The justice of the peace tendered her resignation and the file was closed after the resignation took effect on December 31, 2012.

Dispositions

As indicated earlier, section 11(15) of the *Justices of the Peace Act* authorizes a complaints committee to:

- dismiss the complaint if it was frivolous, an abuse of process or outside the jurisdiction of the complaints committee;

invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;

- order that a formal hearing into the complaint be held by a hearing panel; or,
- refer the complaint to the Chief Justice of the Ontario Court of Justice.

Of the 65 files addressed and closed, four complaints were dismissed by the Review Council under section 11(15)(a) on the basis that they were found to be outside of the jurisdiction of the Council. These files typically involved a complainant who expressed dissatisfaction with the result of a trial or with a justice of the peace's decision, but who made no allegation of misconduct. While the decisions made by the justice of the peace in these cases could be the subject of other legal remedies, such as an appeal, the absence of any alleged misconduct meant that the complaints were outside of the jurisdiction of the Review Council.

In four cases that were closed, the Council lost jurisdiction over the complaints. This occurs when a justice of the peace retires, resigns or dies and no longer holds the office of justice of the peace.

Complaints within the jurisdiction of the Council included allegations such as improper behaviour (rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias.

Forty-one complaint files were dismissed by the Review Council under section 11(15)(a) after they were investigated by a complaints committee and determined to be unsubstantiated or unfounded or the behaviour did not amount to judicial misconduct.

In 12 cases, the Review Council provided advice to justices of the peace under section 11(15) (b) of the *Act.* In seven of those cases, the justice of the peace was sent a letter of advice concerning issues raised in the complaints, and in five cases the justice of the peace attended before the complaints committee to receive advice in person concerning the issues raised in the complaints.

Three complaints were referred to the Chief Justice of the Ontario Court of Justice pursuant to section 11(15)(d) of the *Act* during 2012. A complaints committee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where

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the committee is of the opinion that the conduct complained of does not warrant another disposition and that there is some merit to the complaint. As well, the committee is of the view that a referral to the Chief Justice is a suitable means of informing the justice of the peace that his or her course of conduct was not appropriate in the circumstances that led to the complaint. The committee may recommend imposing conditions on its referral to the Chief Justice where the committee agrees that there is some course of action or remedial training of which the justice of the peace could take advantage and the justice of the peace agrees.

Following the meeting with the justice of the peace, the Chief Justice provided a written report to the committee. After reviewing the Chief Justice's report, the committee noted that the matter had been appropriately addressed and the file was closed.

One public hearing was completed in 2012. Decisions made in this case are included in the appendices of this Annual Report. A public hearing will be ordered pursuant to section 11(15)(c) where the complaints committee is of the opinion that there has been an allegation of judicial misconduct which the majority of the members of the committee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. When a hearing is ongoing, updates on the status of the case are posted on the Review Council's website. At the end of a hearing, the decision can be found on the website under the link "Public Hearings Decisions" at **www.ontariocourts.on.ca/jprc/en/hearings/.**

Types of Cases

Of the 65 complaint files that were completed and closed, 37 arose from events during provincial offences proceedings, six arose from matters in Intake Court, 13 arose from proceedings under the *Criminal Code* (seven from set-date court, three from peace bond applications, 2 bail hearings and one *pre-enquête*), and nine related to conduct outside of the courtroom.

Case Summaries

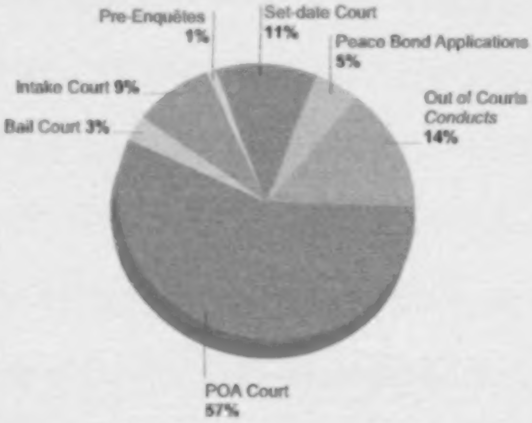
Case summaries for each complaint follow in Appendix A of this Report.

SUMMARY OF COMPLAINTS CLOSED IN 2012

DISPOSITIONS ON COMPLAINTS CLOSED IN 2012	
Dismissed as out of jurisdiction	4
Dismissed as not substantiated or did not amount to misconduct	41
Advice Letter	7
Advice - In-person	5
Referred to Chief Justice	3
Loss of jurisdiction	4
Hearing	1
TOTAL CLOSED IN 2012	65

TYPES OF CASES CLOSED IN 2012

TYPES OF CASES	# OF COMPLAINTS
Provincial Offences Court	37
Intake Court	6
Bail Court	2
Set-date Court	7
Pre-enquêtes	1
Peace Bond Applications	3
Out of Court Conduct	9
Total	65



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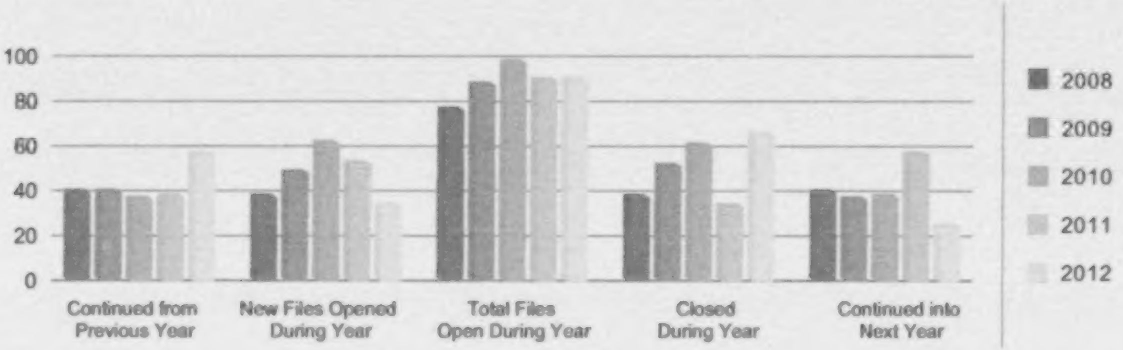
CASELOAD IN CALENDAR YEARS

	2008	2009	2010	2011	2012
Continued From Previous Years	**39**	**39**	**36**	**37**	**56**
New Files Opened During Year	**37**	**48**	**61**	**52**	**33**
Total Files Open During Year	**76**	**87**	**97**	**89**	**89**
Closed During Year	**37**	**51**	**60**	**33**	**65**
Continued into Next Year	**39**	**36**	**37**	**56**	**24**



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APPENDIX A

2012
CASE SUMMARIES

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APPENDIX A

Case Summaries

Complaint files are given a two-digit prefix indicating the complaint year, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 23-001/12 was the first file opened in the 23rd complaint year and was opened in calendar year 2012).

Except where a public hearing was ordered, details of each complaint for which the complaints process was completed, with identifying information removed as required by the legislation, are provided below. Decisions on public hearings are provided in other appendices in this Annual Report.

CASE NO. 21-026/10 AND 21-031/10

Two complaints were received from court staff arising from the same court proceedings on the same date.

Case No. 21-026/10

The complainant alleged that she had "never experienced such an exhibition of conduct so unbecoming from a member of the bench as was exhibited by Justice of the Peace [name redacted]. My fellow clerk was disgraced and humiliated in open court" by His Worship. She added that His Worship made a "number of unnecessary, unprovoked comments directed at a paralegal from the Duty Counsel Office, Court Liaison and Crown". In the complainant's opinion, His Worship's manner and tone of voice towards the court staff, Crown, Duty Counsel, accused persons and the general public was discourteous, brazen and unprofessional.

Case No. 21-031/10

The complainant alleged that from the moment His Worship walked into court that day, "his conduct was far from professional". She alleged that His Worship "singled me out in court and bullied me in front of the public and court staff. The way I was spoken to left me feeling completely embarrassed and intimidated. I have never been so humiliated in my life." She indicated that the justice of the peace "was not only aiming his anger and disrespectful comments to myself but Duty counsel's Paralegal, Court Officers, Liaison

Officers, The Crown, Court Staff and Public/Accused Persons were also victims of his verbal misconduct". She also alleged that His Worship was rude when dealing with accused people before the court.

Before a final determination was made on these complaints, the Review Council administratively closed the files due to a loss of jurisdiction.

CASE NO. 21-040/10

The complainant was a lawyer who was in a courtroom in relation to a pre-trial when he heard his name being paged to a different courtroom for a bail proceeding. He explained that he used the internal court phone system to call the courtroom and enquire as to the reason for the page and to let them know where he was. He advised that this is a common occurrence which he considered a courtesy to the judges and justices of the peace.

It was alleged that when he attended the bail courtroom, the presiding justice of the peace began to "yell and berate me in open court in front of a packed courtroom which included staff, lawyers and more importantly members of the public". The complainant stated, "I was being berated in an aggressive and vitriolic manner". He alleged that "during his tirade against me the justice chose to jab his fingers in the air towards my face and yell that he did not want me to call into his courtroom". His Worship's overall demeanour and "denigrating facial gestures" were viewed as rude, unwarranted, mean-spirited and designed to humiliate him. The complainant indicated that the client's family members, who were present, "were extremely upset to the point that they told me they felt that it was better that they got another lawyer as this judge was 'biased against me and did not like me'".

The complainant indicated that this incident was "not the first time this justice has publicly humiliated me or a member of my staff". The complainant described an attendance by an articling student from his law office before His Worship on an earlier date. The complainant stated that the student had only been with his office for less than two months and did not know the client. "When asked where the client was, the student erroneously said he was not aware, unbeknownst to him the client was right behind him and identified himself to the court, justice of the peace [name] then told the client again in open court that 'this student at law for [the complainant] almost got you a bench warrant and further advised the client directly that he should speak to his lawyer as his lawyer could have created problems for him."

The complainant alleged that "such conduct is so seriously contrary to the impartiality, integrity and independence of the judiciary that it could only undermine public confidence in the ability of Justice of the peace [name] to perform the duties of office or in the administration of justice generally...".

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint materials provided and ordered and reviewed the transcripts and audio recordings of both court appearances referenced in the complaint letter.

After a thorough review of the materials and the court record, the complaints committee found that in the earlier proceeding in which the articling student appeared for the complainant, the court record showed that when an accused was called before the court, the student was not aware that the accused was in the courtroom and requested a bench warrant with discretion. His Worship observed that there was no designation in the file and stated that he would not grant the request. The accused came forward and after the matter was completed His Worship said to the complainant's client, "And the reason why there was a discretionary warrant is 'cause you didn't sign a designation, or counsel was negligent in getting a designation signed by you, which jeopardizes you...their actions could actually have caused a warrant to be issued for you."

The committee noted that in circumstances where an accused does not attend court but is represented by a lawyer, it is a common practice for justices of the peace to issue bench warrants to be exercised with discretion. However, the question of whether such an order should be granted in a particular case is a matter of law outside of the jurisdiction of the Council. The committee was concerned by His Worship's comments and by the use of the word "negligent".

With respect to the bail court appearance, the committee found that the court record showed that the complainant had used the internal courtroom telephone system to call into the courtroom where His Worship was presiding to say that he was on his way in. The record also showed that His Worship told the clerk that the complainant was not to use the phone again and that the next time he called, she should hang up. The complainant then arrived in court and the matter on which he was appearing was spoken to and completed. Before the next matter was called, His Worship told the complainant he had to speak to him. He told the complainant not to phone the courtroom again and that he had instructed the clerk to hang up on him. When the complainant asked why, the justice of the peace told him that it was for the court's use, not his. When the complainant attempted to question the basis for that, His Worship said that "the clerks work for me". When asked for a rule or regulation, His Worship said, "Because I rule." His Worship also stated that he was "just giving the complainant one warning" and told the complainant not to call the phone number. His Worship also said, "…don't give me any funny faces, like…". The complainant also remarked, "I don't appreciate the face I'm getting from the court right now."

With respect to the first court appearance, the committee was concerned by His Worship's statement that "…or counsel was negligent" and with his comments to the accused that "..which jeopardizes you" and "…their actions could actually have caused a warrant to be issued for you". The committee was of the view that the word "negligent" should not have been used.

With respect to the interaction between His Worship and the complainant about the use of the courtroom telephone, the committee was concerned by the tenor of His Worship's interaction with the complainant in communicating to the complainant that lawyers are not permitted to use courtroom telephone. The committee observed that the audio recording, combined with His Worship's choice of words, was lacking in the degree of civility and respect generally expected of a judicial officer in the courtroom. The committee could understand why the complainant felt humiliated and embarrassed by the manner in which he was treated during that appearance.

The committee also observed that the court record showed that His Worship stated in court that "the clerks work for me" and that when the complainant asked for information upon which the prohibition against using courtroom telephone was based, His Worship stated "Because I rule."

With respect to the allegation that His Worship jabbed his finger in the air and made facial gestures at the complainant, the committee observed that the record suggested that His Worship and the complainant may have interpreted each other as making faces. The committee observed that interaction was somewhat argumentative and heated and that in such circumstances, emotions may have been reflected on their faces or through His Worship waving his hand. Although the committee made no findings on whether such actions occurred, the committee concluded that in the circumstances, such actions would not amount to judicial misconduct.

The committee invited the justice of the peace to respond to the allegations.

After receiving and reviewing a response from His Worship, the committee found that His Worship acknowledged using the word "negligent" and upon reflection, he recognized that he should not have used the term. His Worship explained that he did not intend to publicly humiliate the complainant or a member of his staff. He clarified that the idea was to explain to the accused, who looked puzzled, why arrest warrants were being talked about and to advise the student about making better efforts in such circumstances.

With respect to the interaction in bail court, His Worship explained why it was inappropriate for lawyers to use courtroom telephones. For example, clerks are extremely busy in court and should not be used to provide messages for lawyers. As well, it could give rise to an impression that a particular counsel has a special relationship with court staff or receives preferential treatment.

The committee confirmed with the court manager that there was never a practice in the jurisdiction whereby counsel were permitted to call on internal courtroom telephones to provide information to the court. As well, the manager advised that on two occasions when the supervisor became aware that an internal department forwarded counsel calls into court, the supervisor followed up with the department and advised them this was not appropriate. The manager explained that lawyers could contact Duty Counsel if they were unable to attend court or wished to provide the court with a message. The committee concluded that the courtroom telephone should not have been used by the lawyer.

The committee noted that in his response, His Worship explained that he had not intended to humiliate or embarrass the complainant. He apologized if that was the effect of his remarks or the interaction. The committee was concerned that His Worship did not appear to fully appreciate how his manner during the interaction in the courtroom and his comments had in fact humiliated and embarrassed the complainant.

The committee was also concerned that His Worship may not have appreciated the perception that could be left with members of the public by some of his comments. The committee observed that the expression "..because I rule" and the statement "the clerks work for me" could give rise to a misunderstanding about the office of a justice of the peace and his or her role in the administration of justice. A misunderstanding of the judicial role can adversely affect public confidence in and respect for the judiciary. The committee was of the view that in order to maintain public confidence in the judiciary, it

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is important that the public understands that a justice of the peace is not a person who rules, governs or dictates; rather, society gives important powers and responsibilities to the members of its judiciary for the purpose of having an independent and impartial arbiter who settles disputes and adjudicates between the rights of parties, who upholds and maintains the rule of law. The committee noted that while there is a working relationship between clerks in the courtroom and justices of the peace, an incorrect impression could be left with a member of the public by the assertion that clerks "work for me". Courtroom clerks are employed by the Court Services Division of the Ministry of the Attorney General and not by the Ontario Court of Justice directly. It is important that the independent nature of judicial office is understood and appreciated by members of the public.

The committee noted the preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that have been approved by the Justices of the Peace Review Council which state:

> The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office. All judicial officers are obligated to treat members of the public with courtesy and respect.

The Review Council, and by extension, every complaints committee, has the role of maintaining and preserving the public's confidence in judicial officials and in the administration of justice through its review of complaints. The approach is remedial. Section 11(15) of the *Justices of the Peace Act* provides for dispositions that should be invoked when necessary to restore public confidence. Once it is determined that a disposition under section 11(15), other than dismissal, is required, the Council must consider and order what is necessary to restore the public confidence in the judicial official and in the administration of justice generally. The complaints committee assigned to review this matter decided to provide the justice of the peace with written advice, pursuant to section 11(15)(b) of the *Justices of the Peace Act*, as its final disposition of the matter.

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In its letter of advice, the complaints committee reminded His Worship of the responsibility of a justice of the peace to endeavour to maintain dignity, respect and civility in the courtroom. A justice of the peace must strive to be patient, dignified, polite and courteous in performing the duties of judicial office, even if frustrated with a particular party. The committee also reminded His Worship of the importance of being mindful of the public's understanding of and perception of judicial independence. His Worship was advised to consider carefully, before making remarks, or when choosing his words, how those words or remarks could be perceived by the recipient or others.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations and individuals are treated and handled in the future.

After the committee provided its advice, the file was closed.

CASE NO. 21-041/10

A court manager alleged that the actions of a justice of the peace who was assigned to Intake Court constituted unethical and unprofessional behaviour. She alleged that he granted re-openings for paralegals in a manner that by-passed proper procedures and that did not comply with legal requirements. She alleged that His Worship failed to record cases on the court record and fast-tracked cases for paralegals.

Further, the complainant alleged that His Worship entered the Intake Administrative offices and yelled at a court staff person, threatening to remove him from the office in the presence of the public and other co-workers.

Before a final determination was made on the complaint, the Review Council administratively closed the file due to a loss of jurisdiction.

CASE NO. 21-042/10

The complainant, a licensed paralegal, appeared for another paralegal on a trial of a Provincial Offences matter before His Worship. She indicated that she did not have the police officer's notes prior to the trial and had no part in ordering disclosure. She alleged that things began to get worse when His Worship questioned her on whether or not she had reviewed the police officer's notes. She indicated that His Worship said that the Law Society of Upper Canada was regulating paralegals and that he expected more. She also alleged that as she began her submissions, His Worship cut her off while speaking and "told me I was flat out wrong" and "again he brought up the Law Society". She alleged that over two days between re-openings and court appearances, he mentioned the "Law Society" to her about six times. She stated, "It has made me feel like I am working under a threat."

She alleged that His Worship was not aware of a particular subsection of the law, that he berated her and made her cry and then realized that she was correct, and said that it wasn't anything personal.

The complainant indicated that "he makes it impossible to litigate when he keeps waving the Law Society stick at me and making me feel uncomfortable". The complainant indicated that she felt that her credibility had been harmed. She alleged that His Worship said that he had concerns and for reasons where there was no concern. She suggested some sensitivity training for His Worship might be appropriate.

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint materials provided and requested further information from the complainant about the additional court appearances in which His Worship allegedly referenced the Law Society of Upper Canada.

The committee noted from the court record that both court cases referenced by the complainant were on-going before the courts. The Review Council's policy is that if a complaint arises from a court proceeding, the Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This ensures that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters. The committee held the file in abeyance pending written confirmation that the court matters were finished before the Ontario Court of Justice. When the court cases were completed, the committee reminded the complainant to submit further particulars regarding the other court appearances alluded to in her complaint. After further reminders, the committee received her letter with additional information.

The committee reviewed the transcript of the trial in which the complainant appeared, and listened to that audio recording and two other audio recordings of her appearances before His Worship that had occurred in the days prior to the trial. The committee noted that in one of the appearances which occurred in Intake Court, the court record showed that the firm for which the complainant worked had made a mistake and missed a trial date. His Worship did not allow a request for a re-opening and explained why the law did not permit a re-opening to be granted. He also explained that the client's remedy would be an appeal or he could also go to the Law Society of Upper Canada to complain about the mistake. His Worship patiently explained to the complainant why each of her requests for a re-opening would or would not be granted based on the applicable legal requirements. After he finished, she thanked him.

The committee observed that the court record of the trial in which the complainant appeared showed that His Worship's reference to the Law Society of Upper Canada was made after the complainant indicated that she had not reviewed the police officer's notes in disclosure. He explained to her that as a registered paralegal and member of the Law Society of Upper Canada, she had a right and opportunity to review the disclosure. After she declined to exercise that right, His Worship ensured that she had a further opportunity to review the notes and she did so. After she referred to an incorrect section of the legislation in her submissions, His Worship provided the correct section. The committee observed that His Worship did express his concern about the importance of exercising the right of disclosure but he did so politely and professionally.

After its investigation, the committee concluded that any reference to the Law Society of Upper Canada was not inappropriate in the circumstances. The committee also noted that the other allegations about His Worship's conduct were not supported by the court record. While the record did show that the complainant cried during the trial, it was clear that it was not because of any actions or comments by His Worship. Instead, the record showed that the complainant was embarrassed by her mistakes. His Worship appeared to try to assist her by stating that "...this isn't personal number one, all right? And I don't want you to be upset." As well, His Worship was fair and patient in offering to adjourn the matter so that the complainant would have a further opportunity to prepare her submissions.

For those reasons, the complaint was dismissed and the file was closed.

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CASE NO. 21-045/10

The complainant, a senior court administrator, alleged that while presiding in court, the justice of the peace directed comments at the courtroom clerk informing her that it could be her last day in court. He also stated to her that "her boss is not a nice lady". The complainant alleged that these remarks "serve only to sour, if not poison, the workplace." He alleged that the comments were improper, offensive, derogatory and demeaning.

Before a final determination was made on the complaint, the Review Council administratively closed the file due to a loss of jurisdiction.

CASE NO. 21-058/10

The complainant filed a complaint about the presiding justice of the peace in relation to her request for a re-opening. The complainant explained that she had travelled from out of town to attend court for her hearing but arrived late. The prosecutor told her that a re-opening was required in order for her to have a new trial. On that advice, she attended the same court location the following week to request a re-opening. The complainant advised that, after waiting 5 hours, His Worship "gave me no more than 15 seconds of his time". She indicated that she "only had a chance to say that I missed my court hearing on Monday when he interrupted me and told me he doesn't deal with parking issues and that I must make an appeal" at a different court location.

The complainant expressed her frustrations and confusion regarding the system in place to re-open or appeal her matter in order for her to have her trial. She indicated that she went back to the traffic violations office clerk who re-directed her again to see a justice of the peace to request a re-opening. She indicated that she "tried to speak with [the subject justice of the peace] but he would not let me talk", and told her to go to the window and speak with the clerk. The clerk informed her that her re-opening request was stamped as "denied", which came as a surprise to her. Her complaint was "that I was NOT given a chance to say anything about the reopening prior to [His Worship] denying it or told that it was even denied."

She indicated that she tried to speak with His Worship again when he was alone, but he told her that "he was in session and that it wasn't fair to the other people waiting". The complainant indicated that she responded that, "it wasn't fair to me either that I was just dismissed and not given a chance to talk earlier but he said if I didn't leave, he would call security!"

The complainant expressed her view that "this treatment was unacceptable, insulting and unjustified. There was no listening or reasoning and no justification as to why a re-opening was not granted". Since a ruling had been made to deny the re-opening, the complainant was advised by another justice of the peace that her only option was to pay the fine and appeal, which would require her to travel to a different court location.

She asked that this matter be investigated as "the public has a right to be heard whether in court or in front of a Justice of the Peace".

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint materials provided and ordered and reviewed the transcript and audio recording of the complainant's intake court appearances before His Worship.

After a thorough review of the materials, the complaints committee concluded that the court record did not support a finding of misconduct against His Worship. The committee found that the audio recording showed that there were no issues with His Worship's tone or demeanour in his interactions with the complainant. Despite what appeared to be a very busy Intake Court environment, the record reflected that during the complainant's initial attendance, His Worship listened to her explanation that she attended on the trial date but her name had already been called and she was convicted. He explained that her only option was to file an appeal of her conviction. In the view of the committee, it appeared that the complainant was frustrated with the court system and the conflicting information she was receiving from court staff and His Worship. The committee noted that His Worship's decision, that an appeal was the only option, was a matter of law outside of the jurisdiction of the Review Council. The Review Council has no jurisdiction over judicial decision-making or matters of law.

With respect to the complainant's attempt to see His Worship a second time, the record reflected that after the complainant spoke up from the body of the Intake Court, His Worship explained that he was unable to see her at that time and was on the record. He expressed more than once that she was not listening to him. When she persisted, His Worship politely asked the complainant to leave the room and advised that he would call security for assistance if she failed to listen. The committee found that His Worship's tone and demeanour remained professional throughout his dealings with her.

For the aforementioned reasons, the committee dismissed the complaint.

CASE NO. 21-059/10

The complainant filed a complaint about the presiding justice of the peace regarding her request for an extension of time to pay fines on parking tickets. The complainant advised that she attended before His Worship in the Intake Court and alleged that His Worship:

- "did not allow me to explain my situation" and immediately asked me, "if you cannot afford to pay, why did you park there?";
- "was being difficult and demeaning in the way he addressed me and the matter"; and,
- "asked no questions about my circumstances and I believe he made some assumptions about me which led him to treat me poorly".

The complainant indicated that she had brought her notice of assessment with her to show the justice of the peace that it was not a matter of not wanting to pay, but more a matter of not having the means to pay. Her low income was because she was working as a teaching assistant while attending school on a full-time basis. She explained that her low income "may lead a person to think I may be on social assistance" and she believes that His Worship was discriminatory towards her as a result.

The complainant stated, "I am offended by the manner in which [His Worship] treated me and I do not think anyone acting in his capacity should be treating anyone in this way. Interestingly, when I called the supervisor to get [His Worship's] name, she thought she had spoken to me yesterday because another woman had also been treated poorly by [His Worship] and complained immediately".

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint materials provided and ordered and reviewed the transcript and audio recording of the complainant's Intake Court appearance before His Worship.

After a thorough review of the materials and the court record, the complaints committee found that there was no evidence to support a finding of misconduct against His Worship. The record reflected that His Worship questioned the complainant about the reason she had not made payments to her outstanding fines. His Worship listened as the complainant explained that her low income limited her ability to make payments. The committee noted that His Worship gave her an opportunity to be heard and then granted extensions of time for payment of the majority of the fines on the tickets but required her to pay the other fines. The committee viewed no evidence that His Worship made assumptions about her circumstances in order to treat her poorly, as she alleged. His manner was not found to be demeaning. In fact, the record reflected a cordial and professional interaction between His Worship and the complainant.

The complaints committee dismissed the complaint as not supported by the court record.

CASE NO. 21-060/10

This was a complaint about a presiding justice of the peace in relation to his conduct and treatment of members of the public during the morning session of Provincial Offences Court. The complainant, a paralegal, was present to represent a client on a trial. He alleged that he witnessed mistreatment of members of the public by His Worship of people who were appearing before him. The complainant provided specific examples of the mistreatment of two men appearing to request adjournments for friends who were unable to come to court themselves. The first man indicated his friend was home with his sick child. In this matter, His Worship allegedly commented that he believed that the defendant just did not want to come to court and although he granted an adjournment, he directed that the defendant needed to return with a doctor's note as proof that the child was indeed sick. The second man indicated that his friend was sick and undergoing cancer treatment. It was alleged that His Worship directed that defendant needed to return with a doctor's note and uttered to the friend at the end of the matter, "tell him not to speed". The complainant also expressed "what I found most disturbing was the sarcastic and demeaning tone His Worship used in dealing with these two men and other defendants or paralegals. His Worship maintained this tone throughout this entire tier".

The complainant stated that, "I am very disturbed as to how the Administration of Justice would have been perceived by the public in attendance... I am of the belief anyone in attendance would not have any confidence in the Criminal Justice System; felt they would not receive a fair and impartial hearing of their matter and would have left wondering if His Worship's conduct is the accepted norm in Ontario Courts." He went on to say, "With all of my experiences, I felt the conduct, demeanour and language His Worship exhibited toward the public brought the Administration of Justice into disrepute and would definitely erode the public's confidence. I was frankly appalled."

The complainant indicated that a newly licensed paralegal had accompanied him and witnessed His Worship's behaviour. He indicated that "she was mortified with His Worship's conduct and tone." The complainant also clarified that he was not complaining about His Worship's conduct in relation to his client's matter, adding, "that will be dealt with through another forum." The complainant recommended listening to the audio recording of the 10:30 a.m. court cases.

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint materials provided and ordered and received both the transcripts and audio recordings of the 10:30 a.m. court cases before the justice of the peace. As the complainant stated that he was not complaining about His Worship's conduct during his client's court matter, the committee focused its review of the transcripts and audio recordings of the other matters before His Worship that morning.

After a thorough review of the materials and the court record, the complaints committee found that the court record supported the allegations that His Worship demonstrated impatience and made a number of comments that could be perceived as sarcastic, demeaning and unnecessary. This conduct and demeanour were not isolated to His Worship's interactions with the two men appearing as agents for their friends but extended to others, including a paralegal. Following the committee's review of the transcript and the audio recording, the committee could understand how His Worship's conduct, comments and treatment of the public during the proceedings could give rise to negative perceptions of the administration of the justice.

The complaints committee invited a response from His Worship and in doing so suggested that he take the opportunity to listen to the audio recording.

His Worship reviewed the audio recording and submitted a response to the complaint.

In his response, His Worship explained that he is obliged to control the court process by demonstrating integrity and the appropriate firmness. He expressed that sometimes maintaining order and decorum conflict with the perceptions of the public and other participants. His Worship indicated his understanding that it was appropriate for him to request medical notes in the matters where the two individuals appeared as agents for their respective friends. His Worship did not perceive his tone as sarcastic and demeaning.

On review of His Worship's response, the complaints committee concluded that His Worship did not fully appreciate the complainant's concerns or the impact that his conduct had upon members of the public.

The complaints process through the Review Council is remedial in nature. In this case, the committee decided to send a letter of advice to the justice of the peace pursuant to section 11(15)(b) of the *Justices of the Peace Act*. The committee was of the view that a letter of advice was a suitable means of informing His Worship how his conduct during the subject court proceedings fell short of the high standards expected of judicial officers.

The letter of advice was also a reminder to His Worship that the conduct of a justice of the peace plays a vital role in building and maintaining the public's respect and confidence in an individual judicial officer, in the bench, and in the justice system.

In its advice, the committee encouraged His Worship to reconsider his handling of these court proceedings and individuals, and perhaps other similar occasions, with a view to conducting himself in a manner consistent with the high standards of personal conduct and professionalism expected of justices of the peace. His Worship was also reminded that a justice of the peace must be seen to be remaining impartial and objective regarding the proceedings at all times. In maintaining public confidence in the administration of justice, justice must not only be done, it must be seen to be done. His Worship was also encouraged to refrain from making unnecessary gratuitous comments and to be mindful of his tone of voice and to avoid using sarcasm. The committee noted the justice of the peace's role as a model and guardian of the dignity of the court.

After providing His Worship with advice in writing, the committee determined that no further steps were required and closed its file. The complaints committee thanked the complainant for bringing his concerns to the attention of the Review Council.

CASE NO. 22-001/11 AND 22-017/11

The complainant was the superintendent of the building in which the subject justice of the peace lived. The complainant alleged that when he first met His Worship, he "introduced himself as a judge, that has been living in this building for some 20 plus years and that his job was to sue landlords". He also alleged that His Worship said he held no respect for the landlord or the director and when asked about his problems with them, he referenced the director using an obscenity.

The complainant alleged that one day His Worship announced to him, in front of a third party, that "if anybody was to mess with him, they would find a Police car waiting for them out on the road in front of the building and would be followed until a ticket of some sort would be given and possibly more than once until that person learned a lesson." The complainant perceived this to be a threat.

The complainant advised of a strict recycling program implemented by the city and the Region and indicated that he found that garbage from the residence of the justice of the peace was contaminating the recycling materials with pharmaceutical items that were not permitted under the program. The complainant indicated that he immediately telephoned His Worship about it and spoke with him, and that at first His Worship denied it was his garbage. The complainant alleged that when he told His Worship that the contents contained his name and address, His Worship allegedly commented to him, "WHY DON'T YOU GET A REAL JOB?" and reminded him of "what he told me before".

The complainant advised that the next day, a police officer attended and told him that he was there "on a complaint that [the complainant] had over reacted with [His Worship] something to do about garbage and could we stay away from each other...".

The complainant remarked in his letter:

> "Police retaliation is a most disgusting threat. When [His Worship] followed through with his threat to abuse his special position, I decided that enough is enough. The lack of respect towards people and his disregard for a busy Police department shows me that he is out of control and should have to be accountable for his actions."

He advised that, "Judge [name redacted] turns out to be a Justice of the Peace totally abusing his position and using the Police Department for personal retribution pointed at whomever gets in his way."

The complaint was assigned to an investigating complaints committee that retained the services of independent external counsel to conduct interviews of persons with knowledge of the events, including the complainant, the third party and the police officer.

Before the committee completed the first investigation, the complainant filed a second complaint against His Worship in relation to events alleged to have occurred during His Worship's move out of the building. The complainant said that His Worship's vehicle was parked in the fire route. The complainant indicated that he asked His Worship's son, "Can you please tell your dad to move out of the Fire Lane?" The son politely responded that he would. The complainant alleged that His Worship arrived, used an obscenity, and said "I will park anywhere I want to!" The complainant stated that he told His Worship that his car would be towed if it wasn't removed. The complainant alleged that His Worship then said to him that the police were laughing at him, and that His Worship was not finished with him yet. His Worship then allegedly recited from memory the complainant's car license plate number.

The complainant indicated that he responded to His Worship by saying that he didn't think the police were laughing at all and that he didn't think the Review Council was laughing either. Further words were briefly exchanged and the complainant indicated that he tried to avoid His Worship for the rest of the day. Later in the day, the complainant saw His Worship in the lobby. His Worship held out his hand and apologized to the complainant for his behavior that morning, indicating he was under personal stress.

Following the review of both complaint letters and the transcripts of the interviews conducted by investigating counsel, the complaints committee provided disclosure to His Worship and invited a response from him to the complaints. The committee received and reviewed a letter of response from His Worship.

Following the committee's review of His Worship's description of the events, the committee sought further information from the complainant, the third party and the complainant's spouse with respect to what had happened. Follow-up interviews were conducted. The committee received and reviewed transcripts of the interviews. His Worship was provided with the additional disclosure and invited to make any further response. The committee received and reviewed His Worship's second response.

Following its careful review of all of the information gathered through the investigation, the committee found that there were different versions of events given by some witnesses and inconsistencies between witnesses on what had occurred. The committee noted that the contradictions and inconsistencies raised some doubt about some of the events and some of the allegations. The committee found there was not a sufficient basis to support the allegation that His Worship abused his office as a justice of the peace by asking a police office to follow the complainant until there was a reason to charge him. Based on all of the evidence, the committee concluded that the police were contacted by His Worship because a heated angry exchange occurred between the complainant and His Worship at his door about the contaminated recycling materials, which left His Worship feeling harassed by the complainant. The police were not told by His Worship to follow the complainant or to watch him.

Following its investigation, it was evident to the committee that over a period of time, the relationship between His Worship and the complainant was very strained and tumultuous at times. It appeared to the committee that each attributed fault to the other for the altercations that occurred.

The committee noted that in his response, His Worship acknowledged using an obscenity in his dealings with the complainant, and he apologized for doing so.

The committee did not find that His Worship introduced himself as a judge or referred to himself as a justice of the peace. However, the investigation did suggest that others in the building used the nickname "the judge" to describe him.

The committee noted that the public expects high standards in relation to the personal conduct of a judicial officer. Justices of the peace are judicial officers. They are subject to the same standards of conduct as judges. The case law makes no apparent distinction. In a leading case on judicial conduct, *Therrien v. Minister of Justice et al*, the Supreme Court of Canada provided a general description of the requisite qualities and conduct of anyone performing a judicial function:

> "The judge is the pillar of our entire justice system, and of the rights and freedoms which that system is designed to promote and protect. Thus, to the public, judges not only swear by taking their oath to serve the ideals of Justice and Truth on which the rule of law and Canada and the foundations of our democracy are built, but they are asked to embody them…

> Accordingly, the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning....
>
> The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens."
>
> *Therrien v. Minister of Justice et al.*, [2001]2S.C.R. 3 at para. 109 to 111

The committee found that His Worship used an obscenity on at least one occasion and that he conducted himself in a manner on each occasion referenced in the complaints in a manner that was less than the high standard of behavior expected of a judicial officer. On his moving day, he conducted himself in a manner that was inappropriate and unprofessional.

The complaints process is remedial. Pursuant to section 11(15)(b) of the *Justices of the Peace Act*, the committee decided to invite His Worship to attend before the complaints committee to receive advice concerning issues raised in the complaints. His Worship attended and received the committee's advice.

The committee reminded His Worship of the preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that has been approved by the Justices of the Peace Review Council, which in part states:

> The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

These *Principles* are valuable guidelines to justices of the peace in carrying out their duties.

The committee advised His Worship that respect for the judiciary is acquired through the pursuit of excellence in administering justice but also through maintaining an exemplary level of personal conduct in the community. Whether in court or in the community, justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.

The committee reminded His Worship of the importance of a justice of the peace maintaining distance in other activities from his or her role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to the judicial position. The committee noted that if a justice of the peace becomes aware of people referring to him or her by the official title or as a judicial officer, the justice of the peace should request that people not refer to him or her by any official title outside of the courthouse. Otherwise, there could be a perception that the judicial officer believes that he or she should be treated differently from others in his or her personal life.

These complaints were an opportunity for His Worship to reflect upon his personal conduct and interactions with the complainant and others with the view to building public trust and confidence, through demonstrating a high level of courtesy, patience, understanding, professionalism, restraint, and respect in an effort to mitigate any negative perception or impression held in relation to his conduct personally, and reflective upon the Ontario Court of Justice bench generally. His Worship acknowledged that his conduct was not at the level expected of a justice of the peace. He explained his personal circumstances and recognized that in the future, he must be mindful of the expectations upon him as a justice of the peace. He apologized for his conduct.

After the committee provided His Worship with advice in person, the complaint files were closed.

CASE NO. 22-005/11

The complainant represented his daughter during her trial on a charge under the *Highway Traffic Act* before the subject justice of the peace. The complainant alleged that:

- His Worship showed bias, or appeared to show bias, in favour of the prosecution in relation to the lack of disclosure given to the defendant in advance of the trial, and in relation to the officer using notes which were not made contemporaneously with the events.

- His Worship did not protect the *Charter* rights of the defendant to a fair trial.
- At 3:50 p.m., after the prosecution's case was finished and without any prior warning, His Worship abruptly stated that at 4:00 p.m. he was adjourning the trial to a future date. The complainant alleged that His Worship was not concerned by the hardships to the defendant including the need to take more time off work and the distance required for this defendant to re-attend court. The complainant stated that, "Under this duress the defendant pled guilty to a lesser charge."

The complainant expressed concern that defendants who are unfamiliar and inexperienced with court proceedings are at a distinct disadvantage as compared to the prosecution. He stated, "The phrase, '*Not only must Justice be done; it must also be seen to be done*' comes to mind". He concluded that, "When the justice appears to show bias, or suddenly announces the end of the trail [sic] just before defense testimony, the defendant is left with little trust for the system."

The complaints committee reviewed the complaint letter and the materials sent by the complainant. The committee also requested and reviewed the transcript and portions of the audio recording.

After its review of the materials and the court record, the committee could see how His Worship's comments and conduct could be perceived as protecting the police services. A defendant has a right to cross-examine or test the credibility of any witness, including police officers. The committee observed that His Worship objected to the defendant's cross-examination of the officer on his own initiative in the absence of any concerns or objections raised by the prosecutor. The committee could see how it appeared that His Worship was not prepared to allow any criticism of the officer or any questioning of the procedures she followed in investigating the accident. The committee noted that the complainant ceased his cross-examination after His Worship's comments about exercising "respect towards the officer" and that "the officer is not on trial". The committee could understand how His Worship's comments, combined with his tone and demeanour, supported a perception that he lacked objectivity and was in support of and protecting the officer, rather than remaining a neutral and impartial trier of fact.

The committee found that the transcript confirmed that after the prosecutor finished calling evidence, His Worship stated at 3:50 p.m. for the first time that court would not continue beyond four o'clock, and he abruptly stopped the proceedings. Prior to that, no specific time for the early ending of court was ever indicated. The committee was concerned about the perception created by a stop mid-way through the matter, accompanied by such comments and the manner in which His Worship spoke to the complainant. The committee was of the view that it is preferable to advise the parties in advance and provide brief reasons so they are forewarned and not caught off guard when the proceedings are stopped and adjourned. This is even more important if the party has no legal representative to explain how the evidence may be split if the court adjourns in the middle of a case.

With respect to the allegation that the defendant entered a guilty plea to a lesser charge under duress, the committee observed from the court record that His Worship stated that she could enter a guilty plea to avoid having to make the long drive back to court one or possibly two more times.

Further, after reviewing portions of the audio recording the committee was concerned by His Worship's tone.

The committee invited His Worship to respond to the allegations. The committee received and reviewed his response. After reviewing the record and His Worship's response, the committee concluded that His Worship was not biased and did not in any way pre-judge the case. However, it appeared to the committee that His Worship was focusing more on whether his conduct constituted actual bias or prejudice, but not fully appreciating the possibility of a perception or appearance of bias or prejudice.

While the committee found that the response showed some acknowledgement by His Worship that some of his comments were not appropriate, the committee remained concerned that he may not have fully appreciated the impact of one's comments and conduct on persons in the courtroom and on the perceptions that can be created about how justice is being administered. Judicial officers must be aware of the appearance created by their conduct. They must not only be impartial – they must also give the appearance of being an example of impartiality, independence and integrity.

The committee noted that every comment made by a justice of the peace and his or her tone are important elements of how a justice of the peace is perceived by members of the public. The committee noted that the preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice,* which have been approved by the Justices of the Peace Review Council, in part states:

> The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

As well, the *Principles* state:

> 1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.
>
> *Commentaries:*
>
> Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

These *Principles* are valuable guidelines to justices of the peace in carrying out their duties.

The complaints process, through the Review Council, is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations and individuals are treated and handled in the future. In considering a disposition in this matter, the complaints committee was of the view that the appropriate disposition was an in-person advice meeting, pursuant to section 11(15)(b) of the *Justices of the Peace Act*.

In the advice meeting, the committee discussed with His Worship the concerns raised by the complainant and reviewed the portions of the audio recording of the proceeding where His Worship's tone was of concern. The committee also discussed how each comment made by a justice of the peace, and the manner in which the comment is made, in the courtroom has a role in the overall impression left with a member of the public about how justice is administered and in ensuring impartiality and fairness. The public expects every justice of the peace to conduct matters in a manner upholding the high standards required of judicial office. The conduct and image that a judicial officer projects affects the judicial system as a whole and, therefore, the confidence that the public places in it. The committee noted the words of the complainant and reminded the justice of the peace that, in the administration of justice, it is important not only that justice is done but also that justice is seen to be done.

The committee observed that His Worship had sincerely reflected on his actions in the proceeding and had fully appreciated the perceptions that resulted from his conduct. After the in-person meeting, the committee was satisfied that His Worship would implement the advice about how situations and individuals could be handled in the future. After providing its advice, the committee closed the file.

CASE NO. 22-006/11

The complainant, a court agent, filed a complaint about a justice of the peace in relation to his client's court appearance for a trial on a speeding charge.

The complainant indicated in his letter that his client was "the subject of a charge that was withdrawn arising out of his arrest in the courtroom of the justice of the peace". He advised that the charge was withdrawn on the basis that the arrest was unlawful. The complainant stated that, "I believe that the decision of [the Justice of the Peace] allowing an unlawful arrest to be made in her courtroom without stopping the arrest brings the administration of justice into disrepute and shows the serious incompetence of [Her Worship]".

The complaint was assigned to an investigating complaints committee. The complainant provided a copy of the transcript of the proceedings. The committee reviewed the complaint letter and transcript and ordered and reviewed the audio recording of the proceeding.

The committee found that the transcript of the proceeding before Her Worship showed that the defendant, who was self-represented, would not acknowledge his identity in the courtroom and the prosecutor had a dialogue with him to see whether he would acknowledge that he was the person named as the defendant. As well, the prosecutor observed that the defendant was recording the proceedings and told him to turn off the device. The defendant said that he was claiming his lawful right to record the proceeding pursuant to section 136 of the *Courts of Justice Act*. The section requires approval of the presiding judicial officer to record proceedings. The prosecutor asked him to turn off the recording and then told the police to arrest him for not turning off the recording device. After a few comments in which the defendant again asserted his right to record, the police then proceeded, arrested the defendant and removed him from the courtroom. On the basis that the complainant would not identify himself as the defendant, the Crown

Attorney requested that the trial proceed under section 9.1 of the *Provincial Offences Act* which sets out when a defendant is deemed to not wish to dispute the charge. The complainant was convicted of speeding.

Through its investigation, the committee learned that the defendant appealed the speeding conviction on the basis that he didn't have an opportunity to participate in the trial. The investigating complaints committee requested and reviewed the transcript of the defendant's appeal of his speeding conviction. The appeal judge allowed the appeal and a new trial was ordered. The transcript showed that the appeal judge observed that if there was going to be a difficulty with recording devices, a judicial determination was required but for some reason the Crown Attorney decided he was going to make the decision himself and the defendant was arrested.

Her Honour allowed the appeal. Her Honour explained to the defendant that she was not prepared to grant his request for an acquittal. She also explained that approval was required to record proceedings and that he had the right to have the issue of using a recording device under section 136 of the *Courts of Justice Act* determined by a judicial officer. Her Honour also encouraged the complainant to identify himself to the court when his new trial was scheduled.

The committee invited the justice of the peace to provide a response to the complaint. Her Worship provided a response. After reviewing her response, the committee found that Her Worship recognized her responsibilities as a judicial officer, including the responsibility of a judicial officer to make a determination under section 136 of the *Courts of Justice Act* when a defendant seeks to record a proceeding. She also understood that the events that occurred during the proceeding over which she presided should not have happened that way. She acknowledged that she might benefit from further training and the committee supported her request. The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations and individuals are treated and handled in the future.

The committee concluded that there was no judicial misconduct on the part of Her Worship, dismissed the complaint and closed the file.

CASE NO. 22-007/11

The complainant was charged by the local transit authority for refusing to pay a fare. The complainant indicated that he called Legal Aid and was told to speak with Duty Counsel at the courthouse. The complainant attended for his trial before the subject justice of the peace. The complainant advised that he "forgot to ask for a 'fair trial'" and believed that His Worship had received a photograph of his face before the trial and recognized him and exhibited bias against him. The complainant alleged that during the trial, he was never allowed to cross-examine the transit operator and was denied access to information about a directive given to the operator about the validity of the complainant's transit pass. According to the complainant, His Worship disagreed and ruled that the directive was not relevant to the charges before the court. Allegedly, His Worship also commented that he doubted what the complainant claimed that Legal Aid had advised him.

The complainant alleged that he found His Worship "quite vindictive" towards him and that it was obvious that His Worship made "some egregious and excessive and dire mistakes in the handling of my case". The complainant advised he was "railroaded to being found guilty".

The committee reviewed the complaint letter and requested and reviewed the transcript of the court appearance in question. After careful review of the court record, the committee found no evidence to support the complainant's allegations that His Worship recognized him prior to his appearance, exhibited bias, acted in a vindictive manner, disallowed all cross examination of the transit operator or denied access to information about a directive. The committee found that the court record reflected that the complainant's trial commenced but His Worship struck the proceedings part way through the complainant's cross-examination of the transit operator after the complainant expressed he had sought legal help and wanted representation and to have witnesses present to provide evidence in his defence. The record showed that His Worship provided the complainant with three months to get a legal representative and witnesses in order. The committee noted that the complainant thanked His Worship several times for providing him with this opportunity to be better prepared for his trial.

For the aforementioned reasons, the committee dismissed the complaint allegations as not supported by the court record and closed its file.

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CASE NO. 22-010/11

The complainant was charged with speeding and filed a complaint about the justice of the peace who presided over her trial. The complainant alleged that she witnessed His Worship come into court "with an attitude of sheer arrogance and a snide attitude towards the people in the courtroom". From her perspective, she felt that His Worship "was a cold, insensitive, insecure man who was just doing his job and that was to make sure that everyone paid for their speeding tickets no matter what occurred, and that he did".

She indicated that while waiting in the body of the courtroom for her trial, she took a drink of water. She alleged that His Worship told her to leave, and when informed by her that she was diabetic, he allegedly said "Just leave." Additionally, she indicated that a man in the courtroom was told by His Worship to not read in the body of the court "even if he was just reading his fine". The complainant also alleged that His Worship "repeated over and over again that even though anybody says, 'guilty with an explanation, they are still guilty' and this was accompanied with an evil smirk every time." The complainant alleged that His Worship created an ambiance that was "heavy, negative, arrogant and egotistical".

She indicated that she was appalled by the treatment received from His Worship, as well as from the prosecutor and police officer in regards to her matter. She alleged that "it was obvious that [His Worship]'s agenda was to get as much money as he could." The complainant expressed frustration with the trial process and indicated that she "was standing in a courtroom in my country, Canada, crying my eyes out, totally appalled that I was put into this position by the policeman, the prosecutor and the judge." She indicated that "these three people who were as cold as ice, had an agenda, they treated me like I was not even there".

She expressed in her letter that "it wasn't the fact that he said I was guilty, but what was even more upsetting was the snide look on his face when he charged me, and with an abusive smirk said 'HAVE A NICE DAY' [emphasis added by complainant]. At that moment he was not a judge but a premeditated prejudicial little man who took pride in sitting in a seat that I did not think he should be sitting in". The complainant requested that His Worship's conduct be reviewed by the Review Council and she wanted a new trial ordered.

In acknowledging receipt of the complaint, it was explained to the complainant that the Review Council does not have the authority to review the correctness of decisions or to

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order a new trial. It was suggested that if she was unhappy with the decision in her case, she could seek legal advice to determine what legal options or remedies may be available to her. It was clarified that the Council can only review the conduct and behaviour of justices of the peace and its authority does not extend to the conduct of prosecutors or police officers.

The complaint was assigned to an investigating complaints committee. Following the review of the complaint letter, the committee ordered and reviewed the transcript of the complainant's trial, and listened to the audio recording of the entire morning tier before the justice of the peace. In light of the complainant's allegations, additional transcripts of the matters that included the events which she had specified were ordered.

The committee found that the transcript showed that His Worship had stated to a person in the courtroom, "No reading in the courtroom, please?" and "If you wish to continue reading, could you please take it outside." The record also showed that the clerk stated to the complainant, "Madam, there is no drinking while court is in session." His Worship then said to the complainant, "There's no beverages allowed in the courtroom or any kind of beverage containers. Please step outside and consume whatever beverage will assist you and then return." His Worship did not state, "Just leave", as alleged. The committee's understanding was there is generally a prohibition on drinks, other than water, in the courtroom. The complainant alleged she was drinking water.

The committee was puzzled by the direction by His Worship that there could be "no reading in the courtroom" and his follow-up comments to the gentleman that "if you wish to continue reading, could you please take it outside". There was no indication on the record that the gentleman was disturbing court. The committee noted that it is a frequent circumstance that legal representatives review documents in preparation for a pending case while they wait in the courtroom.

After reviewing the court record, the committee found that His Worship's tone appeared to be arrogant, patronizing and sarcastic at times. The committee could understand how the complainant formed her perceptions and impressions of His Worship's conduct.

The committee found that it was clear from the court record that the complainant was unfamiliar with court procedures, the trial process and the expectations on her, as the defendant. The record showed that His Worship did not provide explanations when the complainant expressed her lack of understanding, and that he interrupted the complainant several times during the trial. He then lectured her about the courtesy of not interrupting. The record showed that the experience was an emotional and difficult experience for the complainant, who was crying during the trial.

The committee was of the view that regardless of how busy a court is, there is an obligation on every justice of the peace to take the requisite time to listen to self-represented individuals before him or her and to explain what is happening, so that they can properly understand the decision of the justice and feel that they have been heard. The committee observed that an explanation of the process and of the defendant's right to give her side of the story under oath would have been of great assistance in cultivating an atmosphere where the defendant felt that she had a right to a trial and a right to put forward a defence.

Following its careful review of the court transcripts and corresponding portions of the audio recording of the proceedings, the committee was sufficiently concerned about His Worship's conduct and demeanour that the committee invited a response from His Worship to the allegations and concerns raised. A justice of the peace is not required to provide a response. His Worship chose not to respond.

The complaints process through the Review Council is remedial in nature and through the review of conduct by justices of the peace, improvements are made to how situations and individuals are treated and handled in the future. In a remedial process, it is a valuable step for a justice of the peace to have the opportunity to reflect upon his or her conduct and to be aware of, and learn from, how his or her conduct is perceived by the public. Without a response, the committee had no evidence upon which it could determine whether His Worship truly appreciated the concerns about his conduct, and how that conduct was perceived by the complainant and perhaps others in the courtroom.

After considering the concerns about His Worship's conduct and demeanour, and in the absence of any response from His Worship, the committee determined that the appropriate disposition was to invite His Worship to attend before the complaints committee for the purpose of receiving advice pursuant to section 11 (15)(b) of the *Justices of the Peace Act*.

His Worship attended before the complaints committee. The committee reviewed the complaint and relevant portions of the transcript and audio recordings with His Worship.

The committee reminded His Worship of the high expectations the public places on the conduct of judicial officers. The conduct and image that a justice of the peace projects affect the impression of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. A justice of the peace must be and must give the appearance of being an example of impartiality, independence and integrity.

The committee advised His Worship to reconsider and reflect upon his conduct in his dealings with and treatment of the complainant and others defendants that day. The committee advised His Worship to consider the concerns that were raised by the complainant and by the committee. Also, the committee's advice was to approach each case with a heightened appreciation of each comment he makes, and the manner in which he makes it. Every comment and the tone in which it is delivered, has a role in the overall impression that is left with a member of the public, particularly a self-represented person, about how justice is administered and in ensuring impartiality and fairness.

Having reviewed the complaint and having provided advice to His Worship, the committee closed the file.

CASE NO. 22-012/11

The complainant appeared for a trial on a charge of a parking violation and was convicted. He alleged that the decision was unfair and reached with prejudice in an unprofessional and unbecoming manner. He alleged that the justice of the peace treated him in an undignified, disrespectful and unprofessional manner and also called out "YOU" at the complainant on a few occasions when summoning his attention during the trial. He stated that the justice of the peace convicted him of an offence that he did not commit, implied that the complainant was lying and added an extra $20.00 to the fine as a deterrent for his disregard for parking by-laws. He also alleged that he asked the justice of the peace about any avenue for appeal and that His Worship just ignored him. He alleged that there was an absolute lack of respect, patience, understanding and professionalism in the courtroom. Further, he alleged that the justice of the peace showed no knowledge of the spirit of the law and failed to take into consideration the circumstances, the supporting evidence and the motive of the complainant in his decision-making process and showed bias by not giving his plea credibility and the benefit of the doubt. He indicated that the reasoning of the justice of the peace was faulty and unsound. He described the justice of the peace as hostile, offensive, and condescending. He also complained about the prosecutor.

The complainant was informed that the Justices of the Peace Review Council has no jurisdiction to review the conduct of prosecutors. He was informed that if he had a concern about the prosecutor, he may wish to contact the supervisor of the prosecutor.

The complaints committee ordered and reviewed the audio recording and the transcript of the proceedings. The committee found that there was no support for the allegations about His Worship's conduct. On the contrary, the court record showed that the justice of the peace politely explained the trial procedure to the complainant. His tone and manner were professional and calm. The record also showed that His Worship imposed a fine of $60.00, accepting the submission of the prosecutor that the amount was necessary for deterrence. While the justice of the peace was providing the complainant with an opportunity to make submissions as to whether time was needed to pay the fine and his ability to pay it, the complainant did not respond to that and asked about an appeal. His Worship clarified that he was asking whether there was financial hardship.

The committee noted that the complainant disagreed with the conviction and the fine, and felt that His Worship made errors in how he assessed the evidence and interpreted the law. The proper way for the complainant to proceed to address those matters would be through his legal remedies in court, such as an appeal. The Justices of the Peace Review Council has no jurisdiction over such matters of law.

The committee dismissed the complaint for the reasons set out above and closed the file.

CASE NO. 22-014/11

The complainants indicated that their son had on-going problems with his neighbour and was harassed, bullied and assaulted by him and another tenant in his building. The son had criminal charges laid against the neighbour for harassing and threatening the son. The neighbour had a Form 2 issued by a justice of the peace under the *Mental Health Act* against the complainant's son, allegedly based on false information. The complainants stated that they attended at the courthouse to see a different justice of the peace to have further criminal charges laid against the neighbour.

The complainants advised that they attended Intake Court with their son before the subject justice of the peace. The complainants alleged that Her Worship "glared at us in disdain", "pointed her finger at us". Her Worship allegedly stated, "You stay [referring to their son], you out", and ordered them to leave. The complainants said that they were appalled at the treatment and requested to speak with Her Worship and she told them that she would call them in after talking to their son. They alleged that within minutes, their son stormed out of the office indicating she had "refused to listen to any of his concerns" regarding his neighbour and that for every charge he asked for, she simply replied "No!" without giving any explanation. The complainants stated that they all felt hopeless and helpless. They alleged that Her Worship chose not to see the complainants either, and said they did not understand why. They indicated that "what we can conclude from this experience is that [Her Worship] was protecting her associate [another justice of the peace] from any further recriminations" or their son's name was also red flagged so he would have no recourse, thus burying the matter.

The complainants advised that the experience "has shaken our faith in the justice system". They stated that they had sought help and justice but felt that they were re-victimized.

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint letter. The committee requested and reviewed a copy of the transcript and audio recording of the complainant's son's attendance before Her Worship. The committee also reviewed a copy of the court documents that confirmed that the neighbour had been charged with threatening and harassing the complainant's son. The information showed that the charges were subsequently withdrawn and the neighbour signed a recognizance agreeing to have no contact with the son.

The committee found that the audio recording showed that the complainant's son had attended in Intake Court on his own and spoken with Her Worship. There was no indication on the audio recording that his parents came into the Intake Court with him or that Her Worship ordered them out of the room. In reviewing Her Worship's interactions with the son, the record reflected that Her Worship listened to his concerns and was polite and professional in her tone and demeanour. The record did not support the allegation that Her Worship "refused to listen to any of his concerns about his neighbour", nor did it support the allegation that she simply said "no" to every charge he asked for. Rather, the court record showed that Her Worship listened to the son's explanation of the history of the conflict but explained to him that some remedies he was seeking were not possible.

The record confirmed that Her Worship appeared to be assessing the information and had not yet determined what charges, if any, could be sworn when the son suddenly stated "I'm done. Can I have this back?" and after receiving his papers, he got up and left the Intake Court.

The committee found that on the entire audio recording for Intake Court on that date there was no evidence supporting the allegation that Her Worship had any contact with the parents, or that she denied the parents the opportunity to speak to her or ordered them out of the room.

The committee also found no evidence that Her Worship was "protecting her associate" who had issued the Form 2 or that the complainant's son's name was red flagged in any way to prevent recourse or to bury the matter, as alleged.

For those reasons, the committee dismissed the complaint and closed its file.

CASE NO. 22-016/11

The complainant, a judge, filed a complaint after being informed of irregularities with Her Worship's use of her corporate travel credit card. His Honour explained that when a corporate travel card is used for air and rail travel, the expenses appear as charges on the card statement, but the charges also show as diverted and paid centrally by Ontario Shared Services. Subsequently, a reconciliation process occurs whereby the appropriate cost centre of the office in which the card holder works is charged for the expense. His Honour explained that there was a travel card agreement that prohibited using the corporate travel card for any personal purchases or expenses.

In the course of regular reconciliation of travel expenses by Ontario Shared Services, some diverted travel transactions showed that there were purchases made on Her Worship's corporate travel card that appeared to have been for personal travel. Her Worship reimbursed the full amount of the travel. Copies of the travel credit card statements, as well as various e-mail correspondence, were included with the complaint letter.

The complaint was assigned to an investigating complaints committee. The committee invited Her Worship to respond and she chose not to respond.

The committee retained an independent law firm to interview witnesses who had information about the events and to obtain relevant documentation. Through its investigation, the committee confirmed that the justice of the peace's corporate travel credit card was used to book Her Worship's vacation with her husband outside of the country.

The investigation also showed that Her Worship did not provide the requested information or make a full reimbursement in a timely manner. The committee noted that staff in the Office of the Chief Justice cancelled Her Worship's corporate credit card.

The committee provided Her Worship with additional disclosure and gave her a further opportunity to respond to the complaint. Her Worship apologized and accepted full responsibility.

The investigation showed that there was evidence that without her knowledge or permission, a family member used her corporate credit card to make the reservations for the trip. It appeared that Her Worship mistakenly assumed that the reference on the statement to "diverted" costs meant the amounts were charged to the card in error and that the amounts were transferred to her personal card. However, there was no indication that Her Worship took any steps to investigate how a personal travel purchase could have been placed on this card. Nor did she confirm that the purchases were ever appropriately applied on her personal credit card.

Given that this was a corporate card and that the funds involved in use of such a card were public funds, the committee was concerned that Her Worship did not respond in a timelier manner when made aware of the purchases, and she did not reimburse the funds much earlier. As well, the investigation showed that reimbursement occurred only after persistent follow-up on the part of staff.

After its careful consideration of all of the materials and Her Worship's response, the committee concluded that Her Worship's actions were inappropriate and fell below the standard of behaviour expected of a justice of the peace. The committee was concerned that it appeared that Her Worship did not fully appreciate the expectations held by the public of the high standards of conduct for persons who hold the office of a justice of the peace. The preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

> "The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office."

The committee observed that in the *Principles of Judicial Office*, the standard of excellence expected includes the following:

> "Justices of the peace shall maintain their personal conduct at a level which will ensure the public's trust and confidence."

These *Principles* are valuable guidelines to justices of the peace in carrying out their duties.

The committee noted that the public expects a justice of the peace to follow the rules for use of a corporate credit card that involves the use of public funds. A travel card is provided for the convenience of judicial officers who must incur travel expenses related to the obligations of their position and with the expectation that such a benefit will not be used for personal expenditures or travel. As well, the apparent negligence on Her Worship's part in not making any enquiries about an inappropriate purchase with the card could erode the public's trust and confidence in her as a judicial officer.

The committee was of the view that Her Worship had an obligation to repay the public monies used for personal travel within a reasonable time after they were brought to her attention.

The committee decided that the appropriate disposition was a referral of the matter to the Chief Justice for discussion, pursuant to section 11(15)(d) of the *Justices of the Peace Act*.

After her meeting with Her Worship, the Chief Justice reported back on her meeting with Her Worship. The committee could see that the Chief Justice had carefully reviewed the seriousness of the matter and of the concerns with Her Worship. After the discussion, Her Worship had a solid understanding of the rules related to the use of the corporate credit card. She also understood that inaction to address the situation could be perceived as neglectful in fulfilling her administrative responsibilities and that confidence of the public in the judiciary and in the justice system may be lost as a result of such conduct. As well, the committee observed that Her Worship sincerely regretted that she handled such a serious situation in the manner that gave rise to the complaint and that she undertook to be diligent in demonstrating honesty in her public and private activities.

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The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations handled in the future. Following its review of the report from the Chief Justice, the committee closed the file.

CASE NO. 22-018/11

The complainant alleged that the subject justice of the peace was involved in political activity after his appointment as a justice of the peace. The complainant also alleged that he told His Worship that he wanted to get involved in federal politics but did not know how. He stated that His Worship assured him of his personal political contacts and his influential nature with the federal and provincial governments, and said that he would assist the complainant.

The complainant also alleged that His Worship called him and told him about a federal politician running for a federal seat in a particular riding and that the complainant should offer his monetary support for that candidate. Further, he alleged that His Worship and the complainant met with the candidate during his campaign and that at the meeting, His Worship told the candidate that the complainant would arrange a lunch fundraiser, which the complainant subsequently did. The complainant also alleged that His Worship advised him to write negative news articles to discredit some community members involved in politics in an attempt to destroy political reputations of the opposition and create problems for them in the community.

In addition, the complainant alleged that he purchased gifts and trips for His Worship and his wife based on promises from His Worship that he would get him politically appointed. After "many empty promises and no delivery", the complainant indicated that he asked His Worship to explain himself. His Worship allegedly argued with him and denied his behaviour. At that point, their friendship ended.

The complainant alleged that His Worship was responsible for making allegations about the complainant to destroy him in politics and in the community.

The complaints committee reviewed the complaint and retained the services of an independent investigative lawyer to interview the complainant and to obtain documentation referenced in his allegations. The lawyer began an interview of the complainant that was subsequently adjourned to afford the complainant an opportunity to find and provide receipts and documentation in support of his allegations. Subsequently, the complainant contacted him and indicated that he wished to withdraw his complaint. The complainant was informed that he should submit his request in writing setting out the reasons for not wanting to proceed with his complaint. He sent a letter to the Council indicating that he had had a misunderstanding with His Worship but that it had been resolved and he wished to withdraw his complaint.

The complaints committee reviewed the transcript of the interview with the complainant and considered his request to withdraw his complaint. The committee concluded that there was no evidence to support the allegations that the complainant had purchased gifts or trips for His Worship or his wife, and that no further investigation of those allegations was required. However, the committee had concerns about the allegations of political activity and fund-raising.

The committee held the view that a justice of the peace should maintain distance in his or her community events from the role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to the judicial position in community activities.

The committee also noted that the Justices of the Peace Manual contains the policy approved by the Review Council on December 19, 1997 in relation to political and/or community involvement by justices of the peace. That policy sets out the prohibitions against justices of the peace being involved in any political activity:

> This policy applies to all justices of the peace, full-time and part-time, presiding and non-presiding.
>
> 1) No justice of the peace will engage in any form of political activity, at any level of government, including donations to or public endorsement of, any political party. This prohibition of political activity does not impinge on the right of a justice of the peace to exercise his or her right to vote in municipal, provincial or federal elections and/or referenda.
>
> 2) No justice of the peace will stand for, or hold, any elected office, in political, charitable or community organizations.
>
> 3) No justice of the peace will engage in fund-raising activity for any political, charitable or community organization or lend the prestige of his or her office to such fund-raising activity.

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In addition, the committee noted that the *Principles of Judicial Office for Justices of the Peace* state:

> 3. THE JUSTICE OF THE PEACE IN THE COMMUNITY
>
> 3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.
>
> 3.2 Justices of the peace must avoid any conflict of interest, or the appearance of any conflict of interest, in the performance of their judicial duties.
>
> *Commentaries:*
>
> Justices of the peace must not participate in any partisan political activity.
>
> Justices of the peace must not contribute financially to any political party.
>
> 3.3 Justices of the peace must not abuse the power of their judicial office or use it inappropriately.
>
> 3.4 Justices of the peace are encouraged to be involved in community activities provided such involvement is not incompatible with their judicial office.
>
> *Commentaries:*
>
> Justices of the peace should not lend the prestige of their office to fund-raising activities.

The committee invited a response from His Worship on the request by the complainant to withdraw the complaint and on the allegations. The committee subsequently concluded that it did not have the legislative authority to permit a withdrawal of the complaint.

The committee observed that in his response, His Worship denied all allegations of wrongdoing. His Worship confirmed that although he had been actively involved in politics prior to his appointment, but after his appointment he had sought advice about such involvement. He assured the committee that since his appointment, he had not engaged in political activities, nor had he lent his support to political candidates. He also assured the committee that he was mindful of the care that must be taken by him, as a justice of the peace, in any dealings with political figures.

Following receipt of His Worship's response, the committee conducted further investigations and has found no evidence to corroborate the complainant's allegations with respect to His Worship's involvement in political activity and fundraising, and in particular his claim to have attended a meeting with a federal politician and His Worship.

The committee noted that His Worship had reflected upon the importance of a justice of the peace refraining from any form of political activity, at any level of government, including donations to or public endorsement of, any political party. As well, His Worship confirmed his awareness that justices of the peace should not lend the prestige of their office to fund-raising activities.

For all of these reasons, the committee dismissed the complaint.

CASE NO. 22-019/11

The complainant alleged that the subject justice of the peace committed obstruction of justice and breached the *Justices of the Peace Act* by signing a search warrant without a signed Information to Obtain Search Warrant (ITO) and without supporting information from the police.

The complainant submitted an unsigned copy of the Information to Obtain Search Warrant (ITO) which he indicated he had received from the court file. As well, he indicated that two appendices that were mentioned in the document were not attached to the copy of the warrant he had received. He indicated that the response received from the court was that "there isn't anything from the police yet", no appendices were on file and no information to obtain had been filed. He alleged that the issuance of the search warrant in such a manner was "a clear breach of my *Charter* section 8" rights and "clear negligence on the JP's part". The complainant alleged that the search warrant was invalid and there was a "complete disregard of judicial process and professional negligence".

The complaints committee reviewed the complainant's materials and contacted Court Services staff for further information. The committee reviewed documentation from the courthouse and determined that the Information to Obtain Search Warrant was sworn, and signed by Her Worship and had the appendices attached. The committee found that there was no support for the allegations made by the complainant. He was referred to Court Services to follow up if he wished to make a request for the documentation.

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For the aforementioned reasons, the committee dismissed the complaint and closed its file.

CASE NO. 22-020/11

The complainant was charged with a number of criminal offences and held for a bail hearing. He alleged that the justice of the peace decided the outcome of his appearance in bail court before he appeared in court. The complainant indicated he learned from video disclosure and from the notes of the officer that the police knew prior to his first appearance in bail court that he would not be released. He alleged that the police conspired and obstructed due process with the National Defence department, the Crown Attorney's office and the justice of the peace to breach his rights. He alleged that when the police attended at the courthouse on the date after his arrest when he had his first appearance in bail court, they were already "unofficially" informed that he would not be released and would be held in custody for three days. With his complaint letter, he submitted a copy of an excerpt from an officer's notes which stated "...we did not attend court however were unofficially informed that [the complainant] would be held in jail until [a certain date three days later]." The complainant alleged criminal negligence and obstruction of justice.

The complaints committee reviewed the complainant's correspondence and materials and requested a copy of the transcript and audio recording of the complainant's bail proceedings. The committee found that the transcript showed that in bail court on the date when the complainant had his first appearance in bail court, the Crown Attorney requested that the bail hearing be adjourned for three days. Duty Counsel represented the defendant and raised no objection to an adjournment on behalf of the complainant.

The committee contacted the lawyer who had acted as Duty Counsel on behalf of the complainant at his appearance in bail court when the matter was adjourned, one police officer, one military officer, and the Crown Attorney who requested the adjournment in bail court to obtain further information about what had occurred. All of the parties informed the committee that they had no pre-court discussions with the justice of the peace prior to the appearance in bail court regarding an adjournment of the bail hearing.

After considering the information received from the complainant, the information obtained from the witnesses and the court record, the complaints committee concluded that the evidence did not support a conclusion that prior to the appearance in court the justice of the peace had pre-determined that the complainant would be held in custody. On the contrary, based on all of the evidence, the committee concluded that no discussion took place with the justice of the peace about the complainant's bail hearing prior to court.

The excerpt from the police officer's notes was explained by information received from the witnesses which clarified that the arresting police office had requested that the Crown Attorney seek a three day hold in order that there could be further investigation. Based on that request and the information that the Crown Attorney had, he decided to request an adjournment for three days for further investigation, and likely conveyed that position to the arresting police officer prior to court. The court record confirmed the request from the Crown Attorney. The committee noted that such requests by the police and by the Crown Attorney are not uncommon in criminal courts. Nor is it uncommon for the Crown Attorney to convey his or her position to the arresting officer prior to court. The committee also found that there was no evidence to support the allegations of criminal negligence or obstruction of justice.

For those reasons, the committee dismissed the complaint and closed the file.

CASE NO. 22-021/11

The complainant appeared before the subject justice of the peace for a trial to contest a parking infraction. He alleged that prior to his trial, His Worship summoned him and two other defendants forward and commented, "I am not trying to intimidate you, but if you choose to go on with the trial, I can fine you up to $5,000 dollars." The complainant advised that as a layman, he found the remarks intimidating, particularly given that His Worship provided no explanation as to the special circumstances which may give rise to him increasing the fine beyond the original fine stated on the infraction notice.

The complainant chose to proceed with his trial and in his defence raised concerns about the parking ticket system and issues with proper signage. He alleged that in His Worship's closing remarks, he indicated that the complainant had made good points but that His Worship had no control over the parking system. His Worship found the complainant guilty and imposed a fine of $50.00. The complainant said that he took issue with His Worship imposing a fine over the set fine amount, particularly since His Worship agreed that there is a flaw with the current parking system. The complainant indicated that he "expected a fine of less than $10 (plead guilty offer) if found guilty." The complainant indicated in his letter that he had wanted to make further statements in court about the unfair and unjust parking system, but "due to fear of being fined $5,000 by the judge, I decided not to."

In summary, the complainant expressed, "I strongly feel that justice had not been served. Defendants should be assumed innocent until proven guilty, be encouraged to speak out their thoughts and not be intimidated by the justice of the peace. The fine sanctioned by the Justice of the Peace for guilty verdict should not exceed the original parking fine stated on the infraction notice".

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint and ordered and reviewed the transcript and audio recording of the complainant's court appearance.

After careful review of the court record, the committee found that the record confirmed that His Worship had summoned defendants who wanted a trial to come forward, including the complainant, and made pre-trial remarks to them. The record showed that His Worship said that parking is an absolute liability offence and as such, even if a person has a good excuse for parking where he or she did, that is not a valid defence. His Worship stated, "Once you parked the car, you are guilty. That's the way law is written…You're guilty. It doesn't matter circumstance, you are guilty." The committee observed that His Worship's statements may have given the impression to the complainant, and perhaps others in the courtroom, that it was not possible to have a valid defence and that His Worship presumed them to be guilty.

In addition to these remarks, the committee found that the record reflected that His Worship said that when a trial starts, the fine value of the ticket is no longer available and he stated, "I can impose any fine that I wish." He asked the prosecutor to confirm the maximum fine and she indicated that he could impose fines up to $5000.00. Following these comments, His Worship told the defendants that they could resolve the tickets by speaking to the Crown, and then he could adjust the fine. His Worship then polled the individuals, including the complainant, as to whether they wished to proceed to trial commenting, "No, you want to go trial still? Anybody want to plead guilty, it's up to you. You want to plead guilty?"

The committee was concerned by the perception about the administration of justice left with the complainant, and perhaps others in the courtroom, as a result of His Worship's conduct and remarks prior to the commencement of the trial. Additionally, the committee was concerned about the overall impression left by His Worship's manner during the trial. The committee found that the record showed that His Worship interrupted the complainant in his cross-examination of the officer, and it appeared that His Worship was making a conclusion about the relevancy of questions without allowing the defendant an opportunity to explain the reasoning behind his questions. As well, it appeared that His Worship was impatient with the defendant at times. The committee was concerned that His Worship's manner during the trial may have contributed to the complainant's feeling of intimidation and his perception of being presumed guilty.

The complaints committee invited His Worship to respond to the allegations and concerns raised in the letter of complaint.

After reviewing His Worship's response, the committee could see that His Worship had genuinely reflected on his conduct and comments, and that he realized the complainant was left with the impression that he did not receive a fair trial. It was clear to the committee that His Worship had not intended the comments to intimidate, demean or undermine individual rights. His Worship extended his sincere apology to the complainant and undertook to make improvements in how he dealt with matters in the future.

The Review Council, and by extension, every complaints committee, has the role of maintaining and preserving the public's confidence in judicial officials and in the administration of justice through its review of complaints. The approach is remedial. Section 11(15) of the *Justices of the Peace Act* provides for dispositions that should be invoked when necessary to restore public confidence. Once it is determined that a disposition under section 11(15), other than dismissal, is required, the Council must consider and order what is necessary to restore the public confidence in the judicial official and in the administration of justice generally.

The committee noted the preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, that have been approved by the Justices of the Peace Review Council, which in part states:

> The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct

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> and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

As well, the *Principles* state:

> 1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.
>
> *Commentaries:*
>
> Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

Another Commentary states:

> Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

These *Principles* are valuable guidelines to justices of the peace in carrying out their duties.

The committee considered and understood the challenges of presiding in busy courts with heavy caseloads. However, the committee also considered that regardless of how busy a court is, there is an obligation on every justice of the peace to take the requisite time to listen to individuals before him or her and to explain what is happening, so that they can properly understand the decision of the justice and feel that they have been heard. A justice of the peace must never allow the length of the list and the shortage of time to result in a failure to allow for due process and to listen to a defendant. This is particularly important if an individual before them is not legal counsel. In the administration of justice, it is important not only that justice is done but also that justice is seen to be done.

While His Worship's response showed reflection upon his conduct, and acknowledged that his comments and handling of the matter were less than ideal, the committee remained concerned that His Worship may not have fully appreciated the impact of one's comments and conduct on persons in the courtroom and on the perceptions that can be created about how justice is being administered. For that reason, the committee decided that the appropriate disposition to this complaint was a letter of advice pursuant to section 11(15)(b) of the *Justices of the Peace Act*.

The committee reminded His Worship of the applicable provisions in the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*. As well, the committee reminded him that judicial officers must be aware of the appearance created by their conduct. They must not only be impartial – they must also give the appearance of being an example of impartiality, independence and integrity. Each and every comment, the tone and manner in which it is made are all important elements of how a judicial officer is perceived by members of the public.

The committee's advice to His Worship was to reconsider his comments and conduct in his interactions with the complainant, to reflect upon the criticisms and concerns raised by the complainant and have a heightened sense of the how each comment made, and the manner in which it is made, has a role in the overall impression that is left with a member of the public about how justice is administered and in ensuring impartiality and fairness. The committee reminded His Worship that, in the administration of justice, it is important not only that justice is done but also that justice is seen to be done.

Having provided His Worship with advice in writing, the complaints committee closed its file.

CASE NO. 22-023/11

The complainant filed a letter of complaint about the justice of the peace following his Provincial Offences trial. In his letter, he indicated that he was a member of a sovereign Aboriginal Nation.

The complainant alleged that His Worship did not recognize the cultural difference and that he repeatedly chastised the complainant for not understanding him or the rules and procedures of the court. He alleged that His Worship displayed repeated emotions of anger, cultural intolerance and racial superiority. He alleged that His Worship called him "an enigma" and that that he found the remark to be demeaning, insulting and culturally racist. The complainant also raised allegations about the clerk. He alleged that His Worship, the clerk and the prosecutor made open remarks about it being past the lunch break and how they were hungry. He stated that this was rude and very offensive as the innuendo was directed at ridiculing his communication style. As well, he alleged that this was disrespectful of chronic hunger and poverty on Indian reserves. He also alleged that His Worship cut short his testimony while he was on the witness stand and that when he made closing remarks, His Worship directed him to keep it to three sentences, although he didn't limit the prosecutor in any way.

The complainant expressed in the closing of his letter, "While an apology is in order, I don't expect one. It affirms to me that this foreign justice system is full of flaws, even in this modern day and age and that the Canadian justice system continues to fail *"Aboriginal people… through systemic discrimination and attitudes based on racial or cultural prejudice…""*

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint and ordered and reviewed the transcript and audio recording of the complainant's court appearance.

After a careful review, the complaints committee found that there was no evidence in the court record that His Worship demonstrated anger, cultural intolerance or racial superiority. There was no evidence that His Worship was aware of the complainant's aboriginal background or heritage. The record did confirm that His Worship and the prosecutor made repeated efforts to assist the complainant in understanding that he must frame his points as questions, and that cross-examination was not the stage in the trial when a defendant should make statements that he intended to be evidence. That direction was considered by the committee as consistent with proper procedure during a trial.

The committee found that the court record did not support the allegation that His Worship "chastised" the complainant for not understanding him or the rules or procedures of court. There was some indication that His Worship showed some frustration that the complainant continued to make statements to the witnesses rather than asking questions, and that His Worship did say, "At the risk of offending you again, just ask the question. You're testifying. Ask him if he sent the ambulance home." His Worship also stated, "You weren't, you were testifying. You were rattling on telling me things . . . " He also told the complainant, "You're a bit of an enigma." The committee noted that these comments appeared to be made in the context of His Worship trying to have the complainant proceed by asking questions to the witnesses. The committee concluded that although it would have been better if His Worship had refrained from showing frustration when the complainant continued to make statements rather than ask questions, and if he had refrained from expressing his observation about the complainant being "an enigma", those were not found by the complaints committee to amount to judicial misconduct. Further, the committee found no support on the record for the allegation that His Worship's comments were culturally racist.

The committee noted that the allegations about the conduct of the clerk were not matters within the Council's jurisdiction. If the complainant wished to pursue his concerns about the conduct of the clerk, he could contact the Manager of Court Operations.

The complainant alleged that the judge, clerk and prosecutor made comments about the lunch break and how they were hungry. The transcript showed that the prosecutor did comment, "As much as I'd like to go for lunch . . . " The committee noted that the Council had no jurisdiction over the conduct of a prosecutor. If the complainant had concerns about her conduct, could contact her supervisor.

The allegation that the justice of the peace cut the complainant's evidence short was not supported by the court record. The transcript showed that at the end of his examination–in-chief, His Worship asked him, "Anything further, sir?" and the complainant said, "No." The complainant also alleged that in closing remarks, His Worship limited him to three sentences and that he didn't limit the prosecutor. The transcript showed that His Worship did say, "Sir, again, two to three sentences – obviously the prosecutor run a little longer trying to explain the position of the prosecutor..." However, the transcript showed that the complainant then made submissions in several sentences and was not cut off or limited in his final remarks by His Worship.

For the reasons set out above, the committee dismissed the complaint as not supported by the court record and closed its file.

CASE NO. 22-024/11

The complainant was charged with criminal offences. He was ultimately found guilty of some of the offences and sentenced to jail. He filed a complaint against the presiding justice of the peace in relation to two appearances before her in criminal set date court.

The complainant alleged that Her Worship forced him to set a trial date without a pre-trial and without knowing the position of the Crown Attorney as he had not received full disclosure. The complainant also alleged that Her Worship ignored his request to separate the counts (due to his concerns about consecutive sentences on nine counts) and that she commented that she didn't care about his problems and only listened to his lawyer and the Crown Attorney, rather than him. Additionally, he asserted that Her Worship refused to postpone his case and "told me I don't want to listen to you. If you need further disclosure ask the trial judge. She then removed me from the court." The complainant alleged that Her Worship demonstrated bias against him, violated his constitutional rights and natural justice. The complainant expressed that Her Worship had put his life in jeopardy and he was asking the Council to investigate and discipline her.

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint and ordered and reviewed the transcript of the complainant's two court appearances, referenced in his letter.

After careful review, the committee found no support to the allegations made. The committee noted that the complainant was represented by legal counsel, who was in attendance at the first appearance, and was assisted by duty counsel at the second appearance, who was acting on behalf of the complainant's lawyer (who was not present). The committee noted from the court record of the second attendance that when the complainant disputed the information being presented by duty counsel and asked to speak with his lawyer, Her Worship commented "Okay, just take him downstairs". In its review of the complainant's two court appearances before Her Worship, the committee found no support for the allegations of bias or that she violated his rights. The committee noted that any issues relating to disclosure and scheduling of his trial were matters that could be addressed by his counsel.

Having found no support to any of the allegations made, the committee dismissed the complaint and closed its file.

CASE NO. 22-025/11

The complainant was charged with what he termed as "a baseless minor summary charge" and, according to him, he made "an astoundingly wasteful 15 pre-trial appearances". The complainant stated, "I repeatedly and unequivocally and without waiver, asserted my right of disclosure as first and foremost as is my right to a full answer and defence". He indicated that on two such pre-trial appearances, he appeared before the subject justice of the peace. He described Her Worship's conduct as errant, arbitrary and biased.

The complainant stated that the court was obliged to assist him as a self-represented accused and must remain impartial at all times. He alleged that Her Worship ignored these obligations. According the complainant, Her Worship had "no issue with me obtaining Crown disclosure materials that showed the Crown Attorney's strength; moreover the apparent bias arose when I pursued the materials that would show the Crown's weaknesses".

The complainant stated that during the first of the two appearances before Her Worship, he was surprised by Her Worship's "arbitrary" suggestion he was not going to get the complainant's criminal record as disclosure. He alleged that Her Worship's support of the Crown Attorney's position "may have set the tone for the proceedings as a whole and as a result likely prejudiced my defence and infringed my charter rights to disclosure and a fair and public hearing by an independent and impartial tribunal". Further, he alleged that Her Worship showed prejudice by her assertion that he set a trial date before having full disclosure and knowing his defence options.

The complainant alleged that during the second appearance before Her Worship, it appeared that Her Worship was demonstrating favour to the Crown Attorney and even asserted matters and obligations of the Crown Attorney as if they were obligations of the Court by referring to herself and the Crown Attorney "collectively as "we" in the context of the assertion that I was not entitled to the disclosure I was seeking". He alleged that Her Worship clearly preferred to assist the Crown Attorney by attempting to dissuade him from disclosure that he was entitled to. He alleged that rather than assist the unrepresented litigant, or even take the strict middle ground, Her Worship decided the Crown Attorney could benefit from her assistance at the expense of his rights.

He alleged that not only did Her Worship fail to live up to her obligations, but she tarnished the public trust and lost his respect.

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint letter and ordered and reviewed the transcripts of the complainant's two court appearances before Her Worship.

After careful review, the committee found that neither court record of the appearances supported any of the allegations made by the complainant. The committee viewed no evidence that Her Worship demonstrated bias against the complainant, denied him disclosure or favoured or assisted the Crown Attorney as if they were acting as a team. The committee found that Her Worship did not force the complainant on to trial, but rather put the matter over on both occasions to allow the complainant time to speak with duty

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counsel and to investigate the possibility of obtaining further disclosure that he deemed necessary. The committee noted that issues of disclosure can be raised at any time during a case and can ultimately be considered by the trial judge.

For the aforementioned reasons, the complaints committee dismissed the complaint as unsupported by the court record and closed its file.

CASE NO. 22-026/11

The complainant was the executor of his father's will. He indicated that his father's second wife laid a private information against him after she failed in her civil actions to obtain a portion of pension proceeds belonging to the estate, and after she had been declared by the civil courts to be a vexatious litigant. A pre-enquête proceeding was held before the subject justice of the peace which resulted in a summons being issued informing the complainant that he was charged with fraud and that he must appear in criminal court.

The complainant provided a copy of the transcript of the pre-enquête. The complainant alleged that His Worship failed to exercise due diligence. The complainant alleged that it appeared that His Worship had not read the Information or had not retained knowledge of it. He indicated that reading the statement of the applicant in the proceeding would have provided a basis for His Worship to make more meaningful enquiries before reaching a determination to proceed with issuing process.

He alleged that His Worship failed to make enquiries about the relationship between the applicant and the complainant, and he did not ask for information about outstanding legal issues or other matters that could give rise to a spurious complaint. The complainant noted that the applicant referred to a motion and that if the justice of the peace had made enquiries, he could have learned that the reason for the Information being filed in criminal court was directly related to the applicant's lack of success in civil court. The complainant alleged that due diligence required further enquiries to be made.

He stated that His Worship stopped the applicant from answering a question and that a proper follow-up would have disclosed that the correct steps had been taken and that issues were involved that would be determined by a civil court judge.

The complainant also indicated that His Worship said he was familiar with certain programs, that he was not as familiar with them as he should have been and that he should have made himself more aware at the very least through initiating more questions of the applicant. He also alleged that His Worship should have realized that the issues involved were a civil matter rather than a criminal one, and he should have definitively found that out.

The complainant also alleged that the entire tenor of the transcript suggests that His Worship was in a hurry to make a decision rather than giving the matter its due and sufficient consideration.

The complainant referred to section 507.1 of the *Criminal Code* and alleged that His Worship relied on the comments of the applicant. The failure by His Worship to seek any further evidence from anyone, including the applicant, before issuing process contravened the spirit and letter of the law. He also referred to a decision of the Ontario Court of Appeal that considered section 507.1.

In summary, the complainant stated in his letter that "this is **not** a complaint about a perceived poor decision. It **is** a complaint about His Worship not taking the appropriate and required actions to get all the information, facts and evidence before making a decision". The complainant also informed the Council that the best indication of the appropriateness of his complaint was that the Crown Attorney withdrew the charge.

The complainant also informed the Council that the ordeal took much of his time, caused him considerable expense to resolve and caused him much embarrassment.

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint letter and the transcript of the pre-enquête proceedings. The committee noted that a pre-enquête is a private proceeding before a justice of the peace to determine whether process should be issued against an accused person to start the criminal process as a result of a private complaint of another person. The Attorney General is entitled to notice of the pre-enquête hearing, and is provided with an opportunity to attend, to cross-examine and call witnesses and to present any relevant evidence at the pre-enquête without being deemed to intervene in the proceeding.

The committee noted that section 507.1 of the *Criminal Code* sets out the test for a justice of the peace to determine whether process will issue is whether "a case for doing so is made out". The committee found that the transcript showed that His Worship stated that, "There is ample evidence here to issue process." His Worship also stated his view of the legal test required to issue process: "The hearing is just to make sure that there is sufficient facts to go to a trial…And there is sufficient facts."

The complaints committee also noted that a Crown Attorney was present during the pre-enquête. His Worship provided an opportunity for the Crown Attorney to speak before he made his decision. In a pre-enquête, the Crown Attorney may choose to ask questions and may choose to intervene and withdraw the charge or charges at that stage, based upon his or her assessment of the evidence heard and his or her assessment of the likely prospect of a conviction at trial. The Attorney General may enter a stay of proceedings on a private information as soon as the information has been laid or withdraw the information once a justice has determined that process should issue. The committee noted that the Crown Attorney did not ask questions or intervene in the proceedings and a summons was issued. The complainant indicated to the Council that on a later date the charge was withdrawn by the Crown Attorney.

Following its review of the documents and the transcript, the committee concluded that the allegations of a lack of due diligence and insufficient consideration raised by the complainant constituted his disagreement with how His Worship had interpreted the legal requirements of the pre-enquête process and with the decision made by His Worship on the facts before him. The committee also concluded that the transcript showed that His Worship acted in good faith and followed the law as he interpreted it. If the complainant disagreed with his interpretation of the law or the decision, those would be matters for a court determine. Such matters are outside of the jurisdiction of the Justices of the Peace Review Council. With respect to the allegation that the entire tenor of the transcript suggested that His Worship was in a hurry to make a decision rather than giving the matter its due and sufficient consideration, the committee did not find that the transcript supported the allegation. While the committee found that the transcript showed that His Worship said "this is going to be a brief hearing", the comment was made in the context of his explanation of the purpose of the pre-enquête.

The committee dismissed the complaint as being outside of the jurisdiction of the Council and closed its file.

CASE NO. 22-027/11

The complainant was charged with speeding and appeared before the subject justice of the peace to enter a plea of guilty with an explanation. The complainant alleged that Her Worship's conduct was frustrating and disturbing. He alleged that Her Worship would not permit him to speak or to present his defence. The complainant alleged that Her Worship dismissed him "as though I was a child in elementary school with Her Worship as my teacher".

The complainant advised that he "found this most odd and unprofessional" and stated "when and if the Council finds Her Worship at fault I will expect a written apology".

He also provided decisions in other court cases. He indicated that his appeal had been dismissed and expressed his concern about the cost of retaining a lawyer for a further appeal.

A letter to the complainant explained that the Review Council has no legislative jurisdiction to review the decisions of a justice of the peace. Such matters are questions of law that would need to be pursued through remedies in the courts.

The complaint was assigned to an investigating complaints committee to investigate the allegations about Her Worship's conduct. The committee reviewed the complaint letter and requested and reviewed the transcript and audio recording of the complainant's appearance before Her Worship.

Following its review of the court record, the committee observed that Her Worship could have provided further explanation to the self-represented defendant about the process and effect of entering a guilty plea. Regardless of how busy a court is, there is an obligation on every justice of the peace to take the requisite time to listen to individuals before him or her, to explain what the proceeding is about and / or what the jurisdiction of the justice is, so that they can properly understand the decision of the justice. This is particularly important if the individual before them is not legal counsel.

The committee found that the transcript showed that the defendant pled guilty to speeding but indicated that he thought there should be more flexibility to consider the income of the defendant and that payment of a fine should be based on the income. The committee did note, however, that Her Worship tried to explain that fines are established as a deterrent for a person not to be speeding and stated that she had no legislated authority to reduce the fine.

The committee found that the court record showed that, contrary to the complainant's allegations, Her Worship did allow the complainant to speak. The committee observed that although Her Worship's tone was forceful at times, this appeared to be as a result of Her Worship's attempts to re-focus the complainant on the matter of penalty in the context where he had already pled guilty to the offence.

For the aforementioned reasons, the committee concluded that there was no evidence of judicial misconduct, dismissed the complaint and closed its file.

CASE NO. 22-028/11

The complainant was convicted of failing to properly wear a seatbelt, contrary to the *Highway Traffic Act*. She filed a complaint against the presiding justice of the peace arising from her trial.

The complainant alleged that His Worship demonstrated "outmoded behaviour" including "intimidation, power and control over an other, insult, threat, dismissive and unprofessional conduct". She alleged that when she referred to herself as a "friend of the court", His Worship allegedly responded "there is no such thing". She also alleged that his "take" on safety, the pure intent and purpose of the *Highway Traffic Act* in regards to seatbelts was to advise the complainant that he had been an engineer and that the police following her for over two kilometres amounted to nothing. She alleged that the justice of the peace felt that it was important to mention his former profession.

She indicated that the police officer had an intimidating approach when he had stopped her, but that His Worship commented that the complainant was a "strong woman", and could not be intimidated. She alleged that "therewith he excused the officer's action". She expressed the view that the comment "strong woman" was very troubling because His Worship intimated that she was required to tolerate and submit to intimidating actions because she is, in the view of the Court, "a strong woman".

The complainant advised that His Worship's final insult to her was a comment that she "had been watching too much Jeopardy". The complainant found this comment to be "unprofessional, out of line and served no purpose other than to insult". She also alleged that when she advised His Worship that she would be appealing his decision, he "threatened me that my driver's license would be suspended". The complainant also alleged that His Worship compromised the balance that is necessary to serve justice. He practised age and gender discrimination, used insult, intimidation and threat and aligned himself with the intimidation of the officer. "He reduced the sanctity of the Court to a mere theatrical spectre." She alleged that His Worship's actions were an example of the current erosion of confidence in the justice system.

In summary, she alleged His Worship "continues to play out old authoritarian patterns in the Courtroom and reveals that he is prey to the old, outdated ways of intimidation, power and control over an other, insult and threat." She described him as "arrogant, rude, and unprofessional".

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint letter, and ordered and carefully reviewed the transcript and audio recording of the proceeding.

In investigating and assessing each of the complainant's allegations, the committee found that her version of events was inconsistent with the court record of the proceedings. For example, with respect to the complainant's allegations that His Worship demonstrated intimidating, controlling, insulting, threatening, dismissive, rude, arrogant and unprofessional conduct, the committee found that there was no evidence of such behaviour following a thorough review of the transcript and the audio recording of the complainant's trial. Additionally, the committee found that there were no statements or conduct by His Worship that supported the allegations of gender and age discrimination. Rather, the committee observed that the court record showed that His Worship provided information about the conduct of a trial at the outset of the proceedings and displayed a polite, patient and professional demeanour throughout the trial.

With respect to the complainant's allegation that His Worship stated to her that she was a "strong woman", and that he excused the officer's actions during the traffic stop, which she had found to be intimidating, the committee noted that the court record showed that His Worship acknowledged the complainant's concerns about the behaviour of the officer. The committee found that the court record also showed that the actual comments by His Worship during his reasons for judgment were "...I don't think anyone could intimidate you. I think you're a strong willed individual". The comments were not interpreted by the committee to suggest the complainant must generally tolerate intimidating actions against her, or that His Worship found that the officer's actions that day were intimidating or "over the top". Rather, in the committee's view, His Worship's comments were made in the context of his overall assessment of the evidence and his determination that the officer's approach during the stop was not a relevant factor in deciding whether or not the complainant was guilty of not properly wearing her seatbelt that day. The committee noted that if the complainant had concerns with the behaviour of the police officer during the traffic stop, the appropriate remedy would be to inquire as to the procedure for complaining through the Office of the Independent Police Review Director.

In her letter, the complainant alleged that His Worship stated to her that she "had been watching too much Jeopardy". The committee found that the court record reflected that His Worship interjected during the complainant's cross-examination of the police officer to state, "Ma'am, you're putting forth an argument. This is like Jeopardy, you have to have a question." The committee concluded that although the description was somewhat colloquial, His Worship's comment was instructional in the circumstances. With respect to the complainant's allegation that His Worship "threatened me that my driver's license would be suspended", the committee found that court record revealed that after His Worship had registered the conviction, imposed the set fine with costs and given her 30 days to pay the fine, he stated, "If you do not pay in the 30 days Ma'am, your driver's license is suspended". The committee found that this was a factual statement of the law, cautioning her, not threatening her, to pay on time.

Following the investigation, the committee found that the allegation that His Worship, "...reduced the sanctity of the Court to a mere theatrical spectre" was not supported in any way by the transcript or the audio recording of the trial. On the contrary, as indicated above, the committee found that His Worship displayed a polite, patient and professional demeanour throughout the trial.

After concluding that the allegations were not supported by the court record, the complaints committee dismissed the complaint and closed its file.

CASE NO. 22-029/11

The complainant was before the subject justice of the peace for a trial on two charges under the *Smoke Free Ontario Act*. He alleged that His Worship did not act in accordance with the law on the basis of the evidence and instead harassed, intimidated and vented personal grudges with malice and discrimination. He also alleged that His Worship's conduct and comments were to influence the defendant to make a deal with the prosecutor. He indicated that His Worship stopped his cross-examination of the police officer and was determined to convict him. He alleged that when he tried to explain the evidence to the justice of the peace, His Worship refused to hear him and said, "Take him away."

The complainant alleged that His Worship acted in a biased and partial manner, giving the benefit of doubt in deciding in favour of the officer whom the complainant believed had charged him maliciously and with improper purpose. The complainant questioned whether the trial proceedings showed that the trial was "tainted" and the defendant was convicted on the basis that he refused to obey the orders that he plead guilty, rather than based on the evidence presented. The complainant requested that the Review Council look into the matter and take the necessary action.

In a letter acknowledging receipt of the complaint, the complainant was informed that the Justices of the Peace Review Council does not have the authority to review decisions made by justices of the peace. It was clarified that the Council would review his concerns with respect to the conduct and behaviour of the justice of the peace during his trial.

The committee reviewed the complaint letter and ordered and reviewed the transcript and audio recording of the court appearance in question. The committee noted that the court record confirmed that His Worship said, "Make him a deal on the first one...You can't make deals with me, so make a deal with him on the first one." The committee observed that the court record indicated that the complainant did not fully understand the process and His Worship appeared to be dismissive of that lack of understanding. The committee noted that the transcript showed that some comments made by His Worship appeared sarcastic, including a comment at the end of the proceeding that "Happy hour is over." The transcript showed that it was after the complainant was convicted and sentenced, and he continued to try to explain why he believed that His Worship had misunderstood the evidence that His Worship said, "That is it, take him away."

The committee noted that if the complainant disagreed with how His Worship assessed the evidence or made findings of credibility, the proper way to proceed was through legal remedies in the courts. Such matters are outside of the jurisdiction of the Review Council.

The committee noted that justices of the peace are subject to the same standards of conduct as judges. The case law makes no apparent distinction. In a leading case on judicial conduct, *Therrien v. Minister of Justice et al*, the Supreme Court of Canada provided a general description of the requisite qualities and conduct of anyone performing a judicial function:

> "The judge is the pillar of our entire justice system, and of the rights and freedoms which that system is designed to promote and protect. Thus, to the public, judges not only swear by taking their oath to serve the ideals of Justice and Truth on which the rule of law and Canada and the foundations of our democracy are built, but they are asked to embody them...
>
> Accordingly, the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning....
>
> The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens."
>
> *Therrien v. Minister of Justice et al.*, [2001]2S.C.R. 3 at para. 109 to 111

Each and every comment made, the tone and manner in the courtroom are all important elements of how a justice of the peace is perceived by members of the public.

The committee noted that the preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that has been approved by the Justices of the Peace Review Council in part states:

> The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

As well, the *Principles* state:

> 1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.
>
> *Commentaries:*
>
> Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

Another Commentary states:

> Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

These *Principles* are valuable guidelines to justices of the peace in carrying out their duties.

The committee recognized that Provincial Offences court is very busy, with many defendants. While the committee appreciated the demands upon a justice of the peace, the committee was of the view that regardless of how busy a court is, there is an obligation on every justice of the peace to take the requisite time to listen to individuals before him or her, to explain what the proceeding is about so that they can properly understand the process and the decision of the justice. This is particularly important if the individual before them is not legal counsel.

The committee noted that the complainant's perception was that he was being pressured to plead guilty to an offence and that His Worship already believed him to be guilty. Self-represented defendants may have no familiarity with the legal process or concepts. The committee was of the view that it is always important for a justice of the peace to be aware of how his or her comments and conduct are viewed by those appearing before him or her.

Following a careful review of the court record, the committee was sufficiently concerned about the conduct and demeanour of His Worship, and his treatment of the complainant that the committee invited a response from His Worship to the allegations and concerns raised.

After reviewing His Worship's written response, the committee was satisfied that when His Worship said that the complainant should "make a deal", it was His Worship's intention to convey to the complainant the option of speaking with a prosecutor for possible resolution of the matter. It was not His Worship's intention to force him to plead guilty. With respect to the comment to "Take him away," made by His Worship at the end of the proceeding, the committee recognized that there were other matters on the court docket to be heard and that His Worship had a responsibility to keep the court proceedings moving efficiently. However, the committee noted that His Worship could have explained to the complainant that the decision had already been made and that legally the complainant would need to pursue his legal remedies if he disagreed with it.

The committee remained concerned that His Worship may not have fully appreciated the concerns about his conduct and comments on that day, and how his conduct and comments were perceived by the complainant, a self-represented party, and perhaps others in the courtroom.

The complaints process is remedial. In a remedial process, it is valuable for a justice of the peace to have the opportunity to gain an awareness of how their conduct is perceived by the public, and to be able to reflect and learn from that opportunity. Pursuant to section 11(15)(c) of the *Justices of the Peace Act*, the complaints committee invited His Worship to attend before it to receive advice concerning the issues raised in the complaint.

The committee reviewed the complaint and the court record with His Worship, and communicated its comments and advice to His Worship for the purpose of assisting him in fully understanding and appreciating the concerns about his conduct in this matter, and how others perceived his conduct.

The committee reminded His Worship of the high expectations the public places on the conduct of judicial officers. Judicial officers must be aware of the appearance created by their conduct. They must not only be impartial – they must also give the appearance of being an example of impartiality, independence and integrity.

It was the committee's advice to His Worship that he reconsider and reflect upon his conduct in his dealings with and treatment of the complainant during his trial. The committee's advice was for His Worship to approach each case with a heightened appreciation of each comment made, and the manner in which it is made. Every comment and the tone in which it is delivered, has a role in the overall impression that is left with a member of the public about how justice is administered and in ensuring impartiality and fairness.

As indicated above, the complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. The purpose and intention of the advice to His Worship was to assist him in further reflecting upon his conduct in this matter and in fully understanding and appreciating the importance of the impressions and perceptions that may be left with members of the public if one's conduct or comments are less than the high standard expected of justices of the peace. The conduct of a justice of the peace plays a vital role in building and maintaining the public's respect and confidence in an individual judicial officer, in the bench, and in the justice system.

Following its advice, the committee observed that His Worship had sincerely reflected on his actions in the proceeding and had gained a better awareness of the perceptions that resulted from his conduct. His Worship accepted the committee's advice and extended his apology to the complainant. Having provided advice to His Worship, the committee closed its file.

The committee extended its thanks to the complainant for bringing his concerns to the attention of the Review Council.

CASE NO. 22-030/11

The complainant was charged with a number of criminal offences and held for a bail hearing. He alleged that the justice of the peace who heard his bail hearing denied him bail while suppressing letters of support by members of parliament which the complainant stated that he had provided to His Worship. The complainant also alleged criminal negligence and obstruction of justice.

The complainant also alleged that the Crown Attorney and a military police investigator spoke with His Worship in chambers in advance of his bail hearing, thereby pre-determining his bail. The complainant also alleged that during his bail proceedings, His Worship commented that the complainant's mother "was a partner in some crime scheme". His Worship also allegedly commented that the complainant was "mentally ill" with no doctor's report supporting that assertion.

The complainant stated that His Worship "knowingly' engaged in the perversion to obstruct the administration of Justice and clearly have me detained with NO evidence in retaliation of my submitting complaints about 2 of his colleagues in 2010". The complainant alleged that His Worship "places the entire system in [the jurisdiction] into disrepute with his candid repugnant behaviour. In fact, it borders criminal negligence in that he DID obstruct justice".

The complaints committee reviewed the complainant's materials and requested copies of the transcripts and audio recordings of all of the complainant's bail proceedings before His Worship. With respect to the allegation that the justice of the peace detained him in retaliation for previous complaints about his colleagues, the committee noted that the transcript showed that during the bail hearing, the Crown Attorney asked the father of the complainant whether he was aware of previous complaints that his son had made to the Justices of the Peace Review Council about other justices of the peace. The letters were filed as exhibits. The committee also noted that the transcript showed that the justice of the peace adjourned the proceeding to provide an opportunity for the complainant to bring forward another surety. The committee found that there was no evidence of retaliation on the part of the justice of the peace. On the contrary, the transcripts showed that there was evidence presented before His Worship at the bail hearing and that His Worship considered the evidence and based his decision on his findings about the evidence.

With respect to the allegation that His Worship denied him bail while suppressing letters of support by members of parliament which the complainant stated that he had provided to His Worship, the committee found that His Worship appropriately based his decision on the evidence presented during the bail hearing.

With respect to the allegation that the justice of the peace said that the complainant's mother "was a partner in some crime scheme", the committee found that the transcript showed that in his ruling, His Worship had stated, "I am convinced that if I release you to her that there is a substantial likelihood that you will recommit under her supervision…I feel that she may even become a willing partner or may certainly turn a blind eye to assist you in your alleged pursuits." The committee found that these comments were part of how His Worship had assessed the evidence and such findings were within his responsibilities as a justice of the peace to make. If the complainant disagreed with how the evidence was assessed, the proper way to proceed would be through legal remedies in court.

With respect to the allegation that His Worship had stated that the complainant was "mentally ill" with no doctor's report supporting that assertion, the committee found that the transcript showed that in his ruling, His Worship stated, "There is evidence that you suffer from a mental disorder, in particular bipolar disorder." As well, His Worship observed, "Your lawyer placed on the record as part of your proposed plan of release an order for you to seek psychiatric treatment and counseling in addition to a form of house arrest..". The committee concluded that His Worship's comments were part of his assessment of the evidence. As indicated above, such findings were within his responsibilities as a justice of the peace to make. If the complainant disagreed with how the evidence was assessed, the proper way to proceed would be through legal remedies in court.

With respect to the allegation that the Crown Attorney and a military police investigator spoke with His Worship in chambers in advance of his bail hearing, thereby predetermining the outcome of his bail hearing, the committee sought information from the Crown Attorney, the military police investigator and the lawyer who had represented the complainant. All parties informed the committee that no such meeting or discussion occurred with His Worship. As noted above, the transcripts showed that His Worship heard evidence and provided reasons for his decision. Based on all of the evidence, the committee concluded that there was no out-of-court discussion with the justice of the peace that resulted in a pre-determination of the decision prior to the bail hearing that occurred in court.

The committee also found that there was no evidence to support the allegations of criminal negligence or obstruction of justice.

For all of those reasons, the committee concluded that there was no support for the allegations and no evidence of misconduct. The complaint was dismissed and the file was closed.

CASE NO. 22-031/11

The complainant was charged by a local transit authority for refusing to pay a fare. During the first trial, the proceeding was struck so that the complainant could retain legal representation, and the complainant's trial was rescheduled. The complainant filed a second complaint with the Council against the presiding justice of the peace in relation to his second opportunity for a trial.

The complainant stated that he did not receive a fair trial and was requesting a third trial, on the basis of his allegations that Her Worship:

- delayed his trial until all other cases were done, until police arrived in the courtroom and until the complainant's "blood sugar was virtually at its lowest point possible";
- did not allow his witnesses to be present;
- did not allow the complainant to determine if the officer "had been drinking at the time he laid his charge against me or if he had been drinking immediately before the second trial;
- did not allow the complainant the "opportunity to voir dire his [officer's] career to the extent that it may have impinged on said second trial if not on the 'system'";
- only permitted the complainant to present one piece of evidence;
- "did not allow me to defend myself because at no time during the said second trial did she ever then utter the phrase, '*Do you have anything more to add or to anything else to say in your defence?*'"

The committee reviewed the complaint letter and requested and reviewed the transcript and audio recording of the court appearance in question. After careful review of the court record, the committee found no evidence to support any of the complainant's allegations with respect to Her Worship's conduct or actions. The record reflected that Her Worship was calm, patient and professional in her dealings with the complainant and in her consideration of his court case.

The complainant was informed that if he was unhappy with the decision made in his case, he could seek legal advice to determine any legal remedies available to him.

For the aforementioned reasons, the committee dismissed the complaint allegations as not supported by the court record and closed its file.

CASE NO. 22-032/11

The complainant filed a complaint against the justice of the peace who presided over his trial on a provincial offences charge. The complainant alleged that His Worship did not provide him "with due process because it was 4:30 on a Friday afternoon and [the justice of the peace] wanted to leave". The complainant indicated that he raised a defence citing a court case and alleged that His Worship did not want to look at the case. His Worship allegedly said that the case was too old. Additionally, the complainant indicated that the prosecutor was allowed to be excused for a few moments in order to order to "find proof that the case was overturned". According to the complainant, when the prosecutor returned with no such proof, the justice of the peace "...basically told me that he was satisfied that I was guilty and that this was not a valid defence – case closed".

The complainant alleged that His Worship "already had his mind made up, and wanted to leave before we even got started". He also alleged that His Worship "took offence to the fact that I thought that this whole process was ridiculous and unfair and decided to fine me more than double of my original ticket". The complainant alleged that His Worship also accused him of "using bad language" and "being loud-mouthed and rude". The complainant advised that he asked for an explanation for the increased fine but that he "was not provided with one".

The complainant felt as he "was treated like an irritation for taking up [the justice of the peace's] time on a Friday afternoon". The complainant provided a copy of the transcript of his trial.

The complaints committee reviewed the complaint letter and the transcript. As well, the committee requested and listened to the audio recording of the proceeding and obtained and reviewed a copy of the transcript of the appeal.

The committee found that the court record showed that during the proceeding, His Worship appeared to lose patience and become irritated with the complainant. His Worship observed more than once that it was around 4:30 p.m. on a Friday afternoon. He also commented, "Oh god, no, no, no, no" when the complainant said that he had some legal precedents.

The committee also found that the court record showed that His Worship made some comments that were injudicious and that some of his language was intemperate and uncalled for. He said that the complainant was "impudent and despicable". In imposing sentence, His Worship said, "...I'm certainly not going to leave it at what's on the ticket. You've been rude, you've been insulting, you've been loud-mouthed...you've been disgusting." The record showed that His Worship appeared to unilaterally set the fine at

$300.00, suggesting that his actions towards the complainant were punitive in nature, leaving him with the impression that he was being given a higher fine because he relied on his right to have a trial and to raise a legal argument.

The committee also observed that the complainant, a self-represented defendant, expressed his lack of understanding of the process. Rather than offering any procedural explanations, His Worship reacted in apparent frustration. For example, when the complainant expressed his understanding that it was necessary to have proof or evidence of a case being overturned, His Worship provided no explanation that consideration of the law is different from calling evidence. When the complainant tried to ask questions about what was happening after the fine of $300.00 was imposed, he was told to leave and the officer had to intervene to offer to explain.

The committee noted that on the appeal, the appeal judge stated to the complainant, "I agree with you it should not be your impression that you were given a higher fine simply because you relied upon your right to have a trial". On consent, the judge reduced the fine to $85.00.

The committee noted that the preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

> "The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office."

The committee observed that in the *Principles of Judicial Office*, the standard of excellence expected includes the following:

> A justice of the peace should maintain his or her objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.
>
> Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out his or her role with integrity, appropriate firmness and honour.

These *Principles* are valuable guidelines to justices of the peace in carrying out their duties.

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As well, the committee noted that justices of the peace have a duty to ensure a fair hearing. In carrying out this duty, a justice of the peace may offer procedural explanations and assistance where necessary to ensure a fair hearing, in particular when the defendant is self-represented.

The committee decided to invite the justice of the peace to provide a response to the complaint. The committee received and reviewed a response from His Worship.

The committee observed that in his response, His Worship acknowledged that he had lost his patience with the complainant. He regretted that he had expressed his frustration after what had appeared to be a brief trial at the end of a very busy day became hotly contested. As well, upon reflection His Worship agreed that the fine which he imposed was excessive and assured the committee that it was not imposed to punish the defendant for exercising his right to trial. He explained that his perception was that the complainant was rude and was not open to further explanation about the procedures. His Worship admitted that he became impatient and frustrated with the defendant and apologized for dealing with him in a manner that gave him the impression that he was not dealt with fairly.

The complaints process through the Review Council is remedial in nature. Through the review of and reflection upon one's conduct improvements are made as to how situations and individuals are treated and handled in the future. After considering His Worship's response, the committee was satisfied that His Worship had reflected upon his conduct in the proceeding and genuinely learned from the experience.

With respect to the amount of the fine that had been imposed, the committee noted that the proper way to proceed was through an appeal, and the complainant had appropriately taken that step. Such remedies were outside of the jurisdiction and authority of the Review Council.

The committee determined that no further action was required, dismissed the complaint and closed the file.

CASE NO. 22-033/11

The complainant was a veteran police officer who attended before the subject justice of the peace for the purpose of obtaining an arrest warrant. She alleged that while attempting to define the grounds for the arrest warrant, "a conversation ensued that I found deeply disturbing". The complainant indicated that when she was attempting to articulate her grounds for the information, His Worship said he was not satisfied in oath or in writing about the grounds for the arrest warrant. She stated that in an attempt to define her grounds and a conversation ensured that she found deeply disturbing.

She alleges that when she was told by His Worship that he was not satisfied to sign the arrest warrant, she stood up to leave the room and he then told her that she could not leave and that "it was his job to educate me". She stated that she told him that she respected his decision and would attempt to carry out the investigation in the manner he suggested, which was to just go and arrest the subject. She also alleged that when she told His Worship that she did not agree with his decision, he "raised his voice telling me that I could not disagree with him". Further, she alleged that His Worship raised his chest and pointed his finger at her. She states that His Worship told her that the conversation was being recorded and the complainant told him that she was happy about that and turned to leave. She alleged that at this point, he "told me he was going to speak with my supervisor".

The complainant stated that her complaint was with respect to the manner in which she was spoken to, which she found to be very unprofessional. She alleged that he became agitated during this discussion and stated that she felt that his actions were an abuse of power. She stated that she accepted that sometimes the evidence or grounds may not exist but that the manner in which he spoke to her was not how a justice of the peace should conduct himself. She indicated, "I found his behaviour disrespectful and quite deplorable."

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint letter and ordered and reviewed the transcript and audio recording of the subject proceeding. The committee noted that there were some inaudible portions of the audio recording which were transcribed as such in the transcript. However, the committee carefully considered all of the information available on the court record.

The record reflected that the complainant clearly disagreed with His Worship's decision to not issue the arrest warrant. The committee noted that the transcript showed that His Worship explained that he was not willing to issue a warrant for the arrest of the accused based on the grounds provided. He indicated that he would issue a summons and expressed that "a summons, as far as I'm concerned, could be as efficient". The record also reflected that His Worship suggested that the police contact the accused or his mother, who was his surety on a current recognizance. In response, the complainant expressed her opinion that the grounds of public interest and safety existed, even though His Worship had already decided not to issue the warrant. The record revealed that the complainant was reluctant to accept the decision of His Worship and interrupted His Worship to continue to present further arguments and information to show why an arrest warrant should be granted, before she finally stated, "I disagree, but that's okay".

With respect to the complainant allegations that His Worship told her that she could not leave, the committee noted from the court record that His Worship did not prevent her from leaving. Rather, he said, "I'm sorry. Come back", and did state that he did not appreciate her shutting him down.

With respect to the allegation that His Worship told her that it was his job to educate her, raised his voice and told her that she could not disagree with him, the committee observed that although a few comments on the audio recording were inaudible, there was no reference to His Worship saying that it was his job to educate the complainant. Rather, he commented, "The police has to learn about those things." The record did not support the allegation that His Worship said that she "couldn't disagree with him". Rather, the record showed that His Worship said, "I don't care if you, if you appreciate my ways or not or if you're in agreement or not with me. Okay? I don't like to be told that." The committee observed that although the audio recording of this final exchange did show that His Worship's voice was slightly raised, it was not found by the committee to be excessive, unprofessional, disrespectful, deplorable or to be an abuse of power, as alleged. With respect to His Worship allegedly raising his chest and pointing his finger, the committee was unable to verify whether or not this occurred. The committee concluded that even if His Worship raised his chest and pointed his finger at the complainant, in the context of their interactions, this gesture would not constitute judicial misconduct.

With respect to the complainant's allegation that His Worship "told me he was going to speak with my supervisor", the record reflected that at the end of their exchange His Worship stated, "I am going to talk to your, another officer". The committee found that this statement and the tone and manner in which it was spoken did not constitute judicial misconduct.

Following its review of the complainant's attendance before His Worship, the committee found no evidence of misconduct on the part of His Worship in his handling of the warrant request or in his interactions with the complainant.

For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

CASE NO. 22-035/11

The complainant was waiting to speak with a clerk in the Intake Court reception area. She indicated that the clerk was on the telephone and motioned that she would be with the complainant shortly. The complainant alleged that a few moments later a male walked by her, knocked on the glass window and yelled, "Madam Clerk". The complainant stated that she indicated to the man that the clerk was on the phone and that she was next to be served. She alleged that he then responded that he did not care, and proceeded to ignore her and yell. She alleged that she again told him that she was ahead of him and would be served first, and he yelled, "I'm one of the Justices and she works for me." In addition, she alleged that he "continued to bark his orders out at the Clerk while ignoring my presence. He was completely dismissive." Further, she noted that he continued to disregard her and that when she asked for his name, he threw his hands into the air and left the reception area.

The complainant described the clerk as being visibly upset and shaken and barely able to say the name of the justice of the peace. The complainant asked the clerk to make sure that her case was not handled by him and her request was accommodated. She concluded that "the Justice bullying behavior left me feeling intimidated and afraid. I'm also concerned for the well being of the Clerks in that office." She sought an apology for herself, the clerk and the people of Ontario. She also provided the name of a witness.

The complaints committee reviewed the complaint letter and retained an independent external lawyer to assist in the investigation by conducting interviews of the complainant, the witness, the court clerk and her supervisor. The lawyer provided transcripts of the interviews to the committee.

The committee found that the interviews with the court staff confirmed that there was an interaction between the justice of the peace and the complainant, and that the complainant was upset by it. The other witness recalled that the complainant and the justice of the peace were loud but he had little memory of details. The complainant added that His Worship identified himself as a justice of the peace to the complainant, and when she told him that he, as a civil servant, should not be treating people this way, he barked something at the clerk and said "this is ridiculous" or something like that and stomped off to his office. She described the volume of his voice as very loud.

Following its investigation, the committee found that information received from both court staff confirmed that the justice of the peace was a person with a naturally loud strong voice. From its review of all of the information, the committee could see how someone who did not deal with His Worship on a regular basis could have the impression that he was yelling, although for persons who knew him, this very strong voice would be normal for him.

The committee found that investigation confirmed that the clerk whom he had addressed in the presence of the complainant did not find him to be disrespectful. On the contrary, she explained that he had a strong, forceful way of talking that was just naturally loud. The clerk had not found him to be disrespectful or impolite towards her and she had not been upset or shaken. She did not find him to be rude but instead found him to be direct, saying, "I'm a Justice of the Peace and I need to speak to my Madam Clerk" and he had a paper in his hand. The investigation showed that the justice of the peace was dealing with a person in the Intake Court at the time and went to the clerk to get clarification about the documents. The clerk gave him the answer that he needed and he returned to the Intake Court.

The investigation did not confirm that he had yelled or stomped off. Rather, the committee found that His Worship went to the clerk for assistance, and walked away and back to Intake Court as soon as he had the information that he needed.

The committee noted that the investigation confirmed that he had said, "I am a Justice of the Peace, she is the Clerk, she works for me." The investigation confirmed that this remark had not upset the clerk. The committee observed that justices of the peace are not employers or supervisors of court staff. However, the court clerks were working at the direction of the justices of the peace in Intake Court and were doing work for His Worship and the other justices of the peace who were presiding in Intake Court. The committee concluded that the use of the phrase did not constitute misconduct in the circumstances.

The committee noted that the public expects high standards of conduct of a justice of the peace. The committee could appreciate the effect this justice of the peace's manner had on the complainant. However, the investigation showed his natural voice was very loud and his manner was very direct. The committee noted that the complaint was a helpful reminder that, in light of the role of a justice of the peace, he or she should be aware of how his or her conduct may be viewed by others. In particular, it is important to remember the effect one's voice and manner can have on other persons so that he or she can take care to be seen to uphold the high standards of personal conduct and professionalism that the public expects of judicial office.

Following its investigation, the committee dismissed the complaint and closed the file.

CASE NO. 22-036/11

The complainant appeared before the subject justice of the peace in relation to a charge under the *Safe Streets Act* that was withdrawn during his attendance. He alleged that following the withdrawal of the charge, he requested an order from the Court that the police must erase from their records information relating to the charge. The complainant alleged that he "could only have said two words when His Worship interrupted his request and stated, 'Get out of my courtroom or I'll have you thrown out'." The complainant alleged that His Worship's words were "rude and disrespectful" and "encouraging of police violence".

The committee reviewed the complaint letter and requested and reviewed the transcript and audio recording of the court appearance. The committee found that the transcript showed that after the charge was withdrawn, the defendant continued in his efforts to make a request to the court to order that the police take action to erase their records. The committee noted that His Worship repeatedly told the defendant that the matter was withdrawn and was finished and that his request would not be granted.

The committee also noted that the transcript showed that His Worship did not state, "Get out of my courtroom or I'll have you thrown out", as alleged by the complainant. Rather, the court record showed that the complainant continued to try to request an order even though the matter had been withdrawn and His Worship told him that the matter was finished. It was only after the complainant persisted and would not accept that the matter was finished that His Worship commented, "I have dealt with, I have dealt with your matter. I can, I can ask the officer to walk you out of here".

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The committee noted that while His Worship could have explained to the complainant that a justice of the peace does not have the authority to make an order that the police remove information in their records, the comment that he made and the lack of clear explanation were not judicial misconduct.

For the aforementioned reasons, the committee dismissed the complaint and closed its file.

CASE NO. 22-037/11

The complainant appeared in court to contest a speeding ticket she had received. She alleged that she was treated unfairly and that the presiding justice of the peace lacked objectivity.

The complainant indicated in her letter that on the advice of a court clerk, she booked a First Attendance appointment with the prosecutor on the understanding that a resolution (a reduction to 15 km/hr over the limit and no demerit points) was likely to be offered. At the First Attendance, there was no resolution, so the matter proceeded to trial. She indicated that she was summonsed to be present at court on the trial date prior to the 9:00 a.m. or she could be convicted in her absence. She alleged that His Worship arrived at 9:07 a.m. and that the police officer in her matter was not present. Once the proceedings started, she indicated that at least six cases were withdrawn because police officers were not in attendance. She felt that the rules should be the same for everyone. As she was in attendance and the officer was not, she felt that she was not being treated fairly when her matter was not withdrawn. She also alleged that she did not get the opportunity to talk to the Crown Attorney, and as such was not treated fairly or given the same privileges that others received.

The complainant indicated that at 10:25 a.m. her case was finally set to begin, at which point the Crown Attorney said that the officer was en route. She stated that the justice of the peace could have thrown the case out but "sided with the Crown and waited". The officer arrived at 10:35 a.m.

The complainant further alleged that while she was waiting during the entire court session, His Worship "always seemed to defer to the discretion of the Crown" and that if legal representatives asked for postponements, he would ask the Crown Attorney if the Crown Attorney agreed. She alleged that during the day, "every decision was made by the Crown. There was no need for a Judge to be present as he was never impartial, never objective, and always deferred to the Crown for the final decision." She provided examples including a trial involving an Asian man who, in the complainant's view, "did not understand the procedures and did not understand what was being asked of him". The complainant indicated that the Crown Attorney yelled at the man and that His Worship "pretended to listen to the man but did not ask any questions for clarification. In the end the Judge simply asked the Crown Attorney what he thought and the Crown Attorney decided that the Asian man was guilty so the Judge went along with it."

The complainant alleged that during her trial, His Worship interrupted her, saying that she should not be reading her explanation but should just tell it. She stated that when he interrupted her, she lost her train of thought. It appeared to her that His Worship did not want to hear anymore from her, and that his mind was made up and he was going to find her guilty. She alleged that, "His Worship discounted everything I said and once again let the Crown decide the case." She also stated that His Worship convicted her and imposed a fine higher than the stated amount without providing any reasons or rationale.

The complainant indicated that after the verdict, she asked the Court how she could complain about her day in court, and the Crown Attorney started to answer for the judge, which she interpreted as another example of the Crown Attorney running the courtroom, not the judge. The complainant advised when she interrupted the Crown Attorney and said that the justice of the peace should answer, His Worship looked "bewildered" and mentioned she should probably register the complaint with the OPP and perhaps that the OPP could investigate. The complainant was shocked that His Worship didn't know what the procedures were. She stated, "Yet another example that it is the Crown who is running the show in the courtroom and the Judge simply goes along with all decisions made by the Crown". She also expressed her concern that she had to take time off work on three occasions and was then not heard or treated fairly or respected.

In summary, the complainant felt that she was treated unfairly and that His Worship demonstrated a lack of fairness, impartiality and objectivity in deciding her case and in imposing a higher fine.

The investigating complaints committee reviewed the complaint letter and ordered and reviewed the transcript of the entire court tier, and reviewed the audio recordings of her entire trial and any portions prior to that where the complainant was involved.

With respect to complainant's view that her matter should have been withdrawn because the police officer was not in attendance, the committee noted that it is the Crown Attorney who has the authority to decide to withdraw a charge, not the presiding justice of the peace. The Crown Attorney or prosecutor has the responsibility and authority to decide which matters will be withdrawn, and to control the court list including the order in which the matters on the list are called. The committee found that the court record confirmed that the six cases in which the charges were withdrawn that morning were unlike the complainant's case as the prosecutor knew that the officers would not be coming to court. On the contrary, the prosecutor confirmed on the record the officer in the complainant's case was delayed because he had been assisting earlier in the morning with a missing person case and he was on his way to court.

The committee found that the record also confirmed that His Worship attempted to assist the complainant when he asked the Crown Attorney at about 10:23 a.m. about the complainant's matter and whether the officer had shown up yet.

The committee observed that as there was another trial matter ready to be heard, the decision by the Crown Attorney to continue holding the complainant's matter down to allow the officer to attend appeared to be a reasonable way to proceed in the circumstances. The committee also noted that the complainant's trial was not the last to be heard that morning.

Additionally, the committee noted that the complainant's concerns that she could not speak to the Crown Attorney in advance of her trial was not a result of any action by His Worship. Further, there was no evidence in the court record that the complainant requested to His Worship that she should have time to speak with the Crown Attorney.

In regards to the complainant's allegation that His Worship was not impartial and deferred all decisions to the Crown Attorney to make, the record revealed no evidence to corroborate this assertion. For example, the committee noted that an adjournment request by a defendant was considered and granted by His Worship despite the Crown Attorney's disagreement.

In response to the allegation that His Worship interrupted the complainant during her testimony, the record confirmed he interrupted her after a few minutes of testimony asking her "are you reading this word for word?". His Worship then correctly clarified that the purpose of notes is to "refresh your memory, it's not meant to read it word for word". Following this interruption, the record confirmed that the complainant was able

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to complete her testimony. The committee noted that His Worship recognized the complainant was self-represented and as such allowed her some lenience in giving her evidence and provided her with explanations as to court procedures, for example, prior to calling her witness.

With respect to His Worship's decision to impose a fine higher than the set fine noted on the ticket, the committee found that His Worship provided the complainant with an explanation that the fine was higher because the lower amount only applies if the fine is paid within 15 days. He also granted her an extension of six months to pay the fine. In regards to the complainant's question about complaining, the records revealed the complainant stated, "who do I register a complaint with about the other six people that were let go because their police officer was not here?" It appeared to the committee that His Worship misunderstood the complainant's question, thinking she was referring to her earlier argument that other people were not pulled over that day for speeding by the officer and responded accordingly. The committee found that this apparent confusion was not evidence of His Worship not knowing procedures or of judicial misconduct.

After careful review, the committee found no evidence of misconduct on the part of His Worship in his handling of the complainant's trial that morning or in his interactions with her. The committee noted that His Worship was polite, patient and professional in hearing her matter and demonstrated no evidence of partiality in favour of the Crown Attorney. His tone was calm and composed. For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

CASE NO. 22-038/11

The complainant attended with his wife before the subject justice of the peace on a charge of failing to maintain a smoke alarm contrary to the *Fire Prevention and Protection Act.*

The complainant advised in his complaint letter that there had been four previous adjournments of the trial and on the day in question he asked for a motion to have the charge dismissed on the basis that he had requested disclosure three times prior and it had not been provided. The complainant alleged that he could tell that "Her Worship was not very happy with us" and allegedly made "disturbing" comments during the appearance such as, "We've had dealings before and you are not someone who is intimidated";

"because you've been in the business, and I think it's disingenuous of you to say that you, you know, you sent one letter…"; "you've had a lot of experience"; "..you're not being totally upfront. You and I have had dealings in the past…". The complainant indicated that Her Worship adjourned the matter without any request and marked it peremptory on the complainant, clarifying on the record that "peremptory means, come hell or high water, it's going ahead. Is that clear?"

Following the decision by Her Worship to adjourn his matter, the complainant alleged that he and his wife quietly proceeded to leave the courtroom when Her Worship "purposely interrupted the other matter to insult us before the court again", asking twice of the complainant, "Is there a problem?", then commenting, "Oh, I thought you had a comment for the court, no. Fine, [redacted date] for trial."

The complainant indicated that when he and his wife left the courtroom, they were shocked, and that officers who were standing there felt the same way. He alleged that it appeared that Her Worship was not happy with the matter and that Her Worship gave the impression that she knew him very well, even though the complainant was unaware of any previous dealings.

The complainant asked, "I would like to know why she made these absurd comments. I would like to know where she knows me from or my wife. I would like to know why she went out of her way to insult us before the court. We do not deserve to be treated this way." The complainant stated that Her Worship's "role is not to insult and cause friction in the courtroom". He felt that Her Worship was prejudging him and his case. The complainant made a request of the regional judiciary for a different justice of the peace.

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint letter and enclosed transcripts of the complainant's court appearance, as well as the transcript of the matter that followed. The committee also ordered and reviewed the audio recordings for each court matter.

After careful review of the court record, the committee noted that Her Worship had observed that the complainant had provided no proof of his efforts to obtain disclosure. The committee found that the transcript showed that in the context of Her Worship asking questions about his efforts, the complainant stated that he had worked in the law enforcement field for ten years. It was in that context that Her Worship commented that the complainant was experienced. After he said he was intimidated "because we have [the city's] finest brass here...", Her Worship stated that he had been in the business long enough and they had had dealings before, and he was not someone who is intimidated. It also followed from that discussion that Her Worship commented that he was a bit disingenuous to say that he sent one letter when she had no proof that the letter was sent and that the complainant knew the requirements of proof.

The committee found that the court record confirmed that Her Worship had said that the trial would be peremptory on the defendant, and that "peremptory means come hell or high water, it's going ahead". The committee noted that the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* state that justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office. These *Principles* provide valuable guidelines to justices of the peace in carrying out their duties. While the committee found that the use of such terminology in the courtroom was less than ideal, it did not amount to misconduct.

Following the review of the transcript and after listening to the audio recording, the committee concluded that Her Worship made enquiries into the steps taken to obtain disclosure and then ensured that the prosecutor gave disclosure in the courtroom. She adjourned the matter rather than proceed in circumstances where disclosure had not been made. The committee noted that there was no evidence of judicial misconduct. The fact that the complainant's case was adjourned rather than being dismissed for lack of disclosure is a matter of judicial decision-making, which, in the absence of evidence of misconduct, falls outside the jurisdiction of the Review Council.

With respect to the allegation that Her Worship was unhappy with the complainant, after its review of the court record, the committee found that it did not appear that she was unhappy with him. The committee also viewed no evidence that Her Worship was attempting to insult him or his wife as they were leaving court. Further, while the record confirmed that Her Worship commented that she had dealings with the complainant in the past, the committee noted that Her Worship's approach to and overall handling of the case revealed no evidence of bias or prejudice towards the complainant. On the contrary, her adjournment of the matter after disclosure was provided appeared to be a step taken to ensure a fair process.

For the aforementioned reasons, the committee dismissed the complaint.

CASE NO. 22-039/11

The complainant was a lawyer who successfully appealed a decision of the subject justice of the peace on behalf of his client. He explained that his client had appeared before His Worship for her trial on the charge of driving while suspended, contrary to the *Highway Traffic Act*. The complainant stated in his letter that both he and his client were concerned about what occurred during the sentencing phase of the trial.

The complainant indicated that His Worship convicted his client and then began to comment on her driving record. The client attempted to clarify for His Worship that the driving record before the court was not hers. The prosecutor also indicated that the driving record under consideration was being disputed. In response, His Worship commented, "well it appears that you have something to take up with the Ministry with respect to your driving record". According to the complainant, His Worship then went on to use the record against her in sentencing her "to jail for 15 days, along with probation and other penalties".

The complainant expressed that "the conduct of the J.P. was dangerous. It is lacking in fairness, it appeared arbitrary and was wholly outside the temperament, tone and analysis required of a judicial officer."

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint and the transcript of the trial provided by the complainant. The committee requested and reviewed the audio recording of the trial, as well as the transcript of the appeal.

The committee noted that on the appeal, the question was raised of whether His Worship should have relied upon a disputed driving record that was not proven in court.

The appeal was allowed and the conviction was set aside. The Crown Attorney's request that the charge be withdrawn was allowed. No determination was required as to the sentence.

After reviewing the court record, the committee could understand why it appeared to the complainant and his client that there was a lack of fairness, and why they perceived His Worship's actions to be arbitrary and outside the temperament, tone and analysis expected of a judicial officer.

The complaints committee invited His Worship to respond to the complaint.

The committee observed from His Worship's response that it was clear he had reviewed the transcripts of the proceeding before him and of the appeal, and he had genuinely reflected upon his conduct during the proceeding. The committee could see that he had taken very seriously the concerns raised by the complainant and the comments made during the appeal. After careful consideration, the committee concluded that His Worship had considered both his conduct and the profound personal impact on the defendant to have her liberty taken away and to have been sent to jail. From His Worship's response, it was evident to the committee that the complaints process had provided a valuable learning experience and that His Worship has gained insight into the issues raised.

His Worship demonstrated his understanding of the issues and concerns and appreciated fully the importance of a justice of the peace taking the proper steps to ensure that a driving record is the record of a particular defendant. He showed a commitment to learn from his error and to improve in how he conducts proceedings so that they are and appear to be fair. His Worship noted that, in the event that a driving record is to be relied upon by the Crown Attorney and if the record is not admitted by the defendant, a hearing must be held to determine the admissibility of the record.

His Worship agreed that a judicial officer must be fair and be seen to be fair. He showed regret for not having fulfilled that expectation. His Worship expressed in his response his sincere apology to the defendant. His Worship expressed much regret that his manner of conducting the sentencing had also harmed the appearance of justice and diminished respect for the court.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. His Worship's response was found to show careful thought, learning from the complaints process, and to reflect his sincere regret and apology. The committee extends His Worship's apology to the defendant.

For all of those reasons, the complaints committee dismissed the complaint as requiring no further action and closed its file.

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CASE NO. 22-040/11

The complainant indicated that he and his fiancé placed a peace bond on an individual who had been threatening and harassing them. They attended court in case they had to give evidence, and alleged that during the court appearance, the accused was continuing to harass them, making threatening faces and saying vulgar things to them. The complainant alleged that after the presiding justice of the peace spoke to the accused, the complainant politely raised his hand to bring the actions of the accused to the attention of the court, and he told Her Worship that the accused was harassing them in the courtroom. The complainant alleged that he was immediately escorted out of the courtroom. His fiancé remained in the courtroom and allegedly heard Her Worship ask the accused if he needed police protection to get to his car.

The complainant stated that his experience gave the "wrong impression of our judicial system". "I was there to be protected by our system and instead the system protected the criminal."

The committee reviewed the complaint letter and requested and reviewed the transcript and audio recording of the court appearance in question. The committee found that the record reflected that Her Worship saw that there was a gentleman in the courtroom with his hand up and asked the defence counsel whether the person was related to the case. Defence counsel stated that he was not and said he could speak to the Crown Attorney. The male spoke out, appearing to try to explain that he was connected to the case. Her Worship told him that this was not a public forum for him to speak. When the male spoke out again, Her Worship asked for security in the courtroom. Her Worship stated on the record that the gentleman had interrupted the court proceedings and the officer was asked to show him outside until the matter was concluded. The complainant was then removed from the courtroom. The record confirmed that Her Worship did ask the defence counsel if they needed an officer to assist in exiting the building, and the lawyer declined.

The committee was concerned that Her Worship chose to ask defence counsel to confirm whether the gentleman was related to the proceedings, and that she appeared dismissive of the gentleman without making further enquiries about his identity, the reason why he was in attendance and the reason that he wished to address the court. The committee noted that the best practice in such circumstances is to make further inquiries through the Crown Attorney to find out what persons are present related to the case, to identify the person trying to address the court and to find out the reason why they are speaking out. From its review of the court record, the committee could understand the perception left with the complainant that the judicial system was seemingly protecting the accused. The committee invited Her Worship to respond to the complainant's concerns.

The committee noted from Her Worship's response to the complaint that the case that gave rise to the complaint had been traversed to her courtroom from another courtroom. Therefore, she did not see the parties enter the courtroom, nor was she aware that any of the complainants in relation to the peace bond matter were in attendance. Her Worship relied on the information received from defence counsel that the unidentified gentleman was not a party to the proceeding, as the Crown Attorney did not correct this information and declined an opportunity to have the matter held down to speak with him.

The committee observed from Her Worship's response that her intention had been to discourage any possible confrontation in the courtroom, and her decision to call security was done to maintain decorum in the courtroom while she finished reviewing the conditions with the accused before he entered into the peace bond agreement. The committee observed that Her Worship acknowledged that making further inquiries of the unidentified gentleman would have been more prudent. She expressed her apology to the complainant for any embarrassment he felt as a result of her decision to remove him from the courtroom. It was further noted that Her Worship undertook that in the future, she would make further inquiries to avoid a re-occurrence of this nature.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations and individuals are treated and handled in the future. Following its review of Her Worship's response, the committee found that Her Worship had genuinely reflected on her handling of the matter and the perception left with the complainant, and had learned from the experience and the complaints process.

For the aforementioned reasons, the committee dismissed the complaint and closed its file.

CASE NO. 22-043/11

The complainant appeared in court to contest a parking ticket. He had filed a complaint about the presiding justice of the peace who found him guilty.

He alleged "questionable behaviour of the judge and the crown that appear to work together against me". The complainant also alleged that his rights under the *Charter* were not respected and that he was "taken back by how aggressive and abusive the judge was". He felt as though he "had to defend himself from the Crown Prosecutor and the Judge both", alleged that it was not an impartial tribunal and believed His Worship's actions were "to intimidate me so I could not function properly to defend myself." The complainant also alleged that he was not permitted to "pursue a lie that the By-law officer spoke" with respect to a sign that indicated private property at the airport.

The complainant also alleged that His Worship commented, "Dam it, it's the airport and therefore it's private" when the complainant tried to pursue evidence about the sign indicating private property. The complainant further alleged that His Worship would not permit some evidence to be presented and was very abrupt, stopped him again and put him off track. Additionally, he stated that the Crown prosecutor was constantly giving him a hard time by making comments and talking over him, and he alleged that His Worship did not protect him from this constant harassment.

He also alleged that when he tried to give evidence about an email that he sent to the Police Chief, His Worship yelled quite loudly that this was not needed. The complainant indicated that he wondered whether His Worship had prior knowledge from the police or the Crown that the complainant might mention the Police Chief in court.

The complainant advised that during his trial, a Crown employee came in and asked everyone to go to another court room, and that he was told to stay. He said that the By-law officer, whom he needed to make his case, left so he could not make his point. He also alleged that His Worship did not indicate what By-law under which he was found guilty and gave no reason.

The complainant enclosed evidence that he had in court that day and questioned whether it was too late to have it put in the court file. He also commented that people should be informed about what conduct is expected between all parties, how to submit evidence and how to apply for a review. The complainant also indicated in his letter that "a general comment from viewing about three mornings of court before mine, indicated most of the

Justices showed their displeasure to the defendants who were trying to make their case."

The investigating complaints committee reviewed the complaint letter and attachments, and ordered and reviewed the transcript and audio recording of the complainant's entire trial.

After careful review, the complaints committee found no evidence of judicial misconduct in His Worship's handling of the trial or in his interactions with the complainant. The court record did not support the complainant's allegations against His Worship.

The committee found no evidence that His Worship and the Crown prosecutor were working together against the complainant, that they presumed him guilty or denied him a fair hearing. There was also no support in the court record for the allegation that His Worship allowed constant harassment of the complainant by the Crown prosecutor. With respect to the allegation of interruptions by His Worship during the trial, the committee found that some comments were made by His Worship to attempt to focus the complainant on providing information or in asking questions that were relevant to the charge before the court. Such assistance to a self-represented defendant is appropriately within the role of a justice of the peace.

The committee found that the court record, including the audio recording, did not support the complainant's allegations that His Worship's conduct and mannerism was "aggressive and abusive" or that His Worship "yelled quite loudly" when the complainant mentioned the Chief of Police. On the contrary, the committee found His Worship's tone and demeanour to be polite and professional. There was also no evidence that suggested that His Worship had prior knowledge of the evidence that would be given by the complainant.

With respect to the allegation that His Worship swore in open court, the committee noted that the record showed that His Worship did comment that the airport was private property, but at no point did His Worship say "Damn it", as alleged. In response to the complainant's allegation that His Worship found him guilty but provided no reasons, the court record confirmed that reasons were given by His Worship.

With respect to the comment that a Crown employee came in and asked everyone to go to another court room, and that the complainant was told to stay, the committee found that the record showed that other matters were transferred to another court. It is a common and efficient practice for cases to be transferred to other courts that become available to deal with them. The complainant's trial had already begun and His Worship was seized of the matter, so that case could not be transferred. The committee also found that the airport officer who had ticketed the complainant remained in the courtroom and the complainant had an opportunity to cross-examine him.

With respect to the general allegation that, after viewing about three mornings of court prior to his trial, the complainant felt that most of the justices showed their displeasure to the defendants who were trying to make their case, the committee found that this vague allegation about other judicial officers was not relevant to its investigation of the conduct of His Worship. In its review of the proceeding, the committee found no evidence that His Worship showed displeasure towards the complainant for choosing to defend his matter.

For the above mentioned reasons, the committee dismissed the complaint as unfounded and closed its file.

CASE NO. 22-044/11

As the result of information about an incorrect claim received about expense claims from another justice of the peace, a review was conducted of past expenses submitted by justices of the peace in the same region who had travelled the most and had the highest claims. Following the review, the administrative judge who was carrying out the review concluded that over the past seven years, the subject justice of the peace submitted mileage claims that appeared to be inflated and claims for lunch where reimbursement for lunch was not allowable under the expense policy. The administrative judge was concerned that the justice of the peace may have misrepresented his expenses, resulting in an overpayment to him. She noted that the monies involved were public funds that were meant to be paid as compensation for actual expenses according to established rules. She submitted a complaint to the Review Council.

The investigating complaints committee reviewed the expense claims for the period in question and the information received from the administrative judge on the applicable policy and the correct mileage amounts.

The committee noted that when recent discrepancies about expense claims were brought to His Worship's attention by the administrative judge, he immediately explained how the amounts were reached. He took steps that showed he took the concerns seriously and that his intention was to submit accurate claims. He promptly sought information

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about the proper way to submit meal claims and requested a chart of the correct mileage amounts that he should be claiming when travelling to each court location.

The committee invited a response from the justice of the peace. After its consideration of all of the materials and documentation and His Worship's response, the committee was satisfied that in this case, the justice of the peace did not knowingly misrepresent any of the claims advanced in the Statements of Expenses. The committee noted that there were some unique circumstances that were specific to this justice of the peace that provided some explanation for longer distances in some instances than would normally be reasonable and acceptable.

The committee noted that in his response, the justice of the peace agreed that the claims made for meals claimed in one court location should not have been made and that he expressed his willingness to repay those claims. He had also indicated that he was prepared to discuss with any other interested party any other matters which need to be addressed. The committee interpreted that to mean that he was prepared to repay any other amount that was incorrectly paid which had not yet been repaid.

Although the committee was satisfied that the justice of the peace did not wilfully misrepresent his expenses, the committee remained concerned at the number of claims where the amount submitted by His Worship exceeded the generally allowable amount.

The committee observed that the public has high expectations of the conduct of persons who hold the office of a justice of the peace. The preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

> "The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office."

The committee observed that in the *Principles of Judicial Office*, the standard of excellence expected includes the following:

> "Justices of the peace shall maintain their personal conduct at a level which will ensure the public's trust and confidence."

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These *Principles* are valuable guidelines to justices of the peace in carrying out their duties.

The committee noted that the public expects a justice of the peace to fully comply with rules that govern the use of public funds, including the rules for making claims for travel expenses that arise in the course of carrying out the responsibilities of the position. It is critical that all rules governing expense claims must be strictly adhered to in order to maintain the public's trust and confidence in a justice of the peace as a judicial officer.

In accordance with section 11(15)(d) of the *Justices of the Peace Act*, the complaints committee referred the complaint to the Chief Justice for a meeting. The committee requested that the Chief Justice discuss the following concerns with the justice of the peace:

1) The importance of a justice of the peace being fully informed of and in compliance with the rules that apply to the use of public funds. A careless attitude on the part of justices of the peace toward the applicable rules and public funds is not acceptable. Public funds must be used by judicial officer in a manner that demonstrates transparent accountability and unassailable integrity.

2) The importance of a justice of the peace being perceived as careful and diligent in fulfilling his or her administrative responsibilities.

3) The importance of an appreciation that the inappropriate conduct of one justice of the peace can impact on the confidence of staff and members of the public in that justice of the peace, but also their confidence in the judiciary in general and in the administration of justice. If persons perceive that a justice of the peace is careless or that he or she does not believe themselves to be subject to the rules that apply to other public officials or staff, confidence in the justice system may be lost. It is vital that justices of the peace uphold and are being seen to uphold the rule of law outside of court just as their role demands inside the court.

Following her meeting with the justice of the peace, the Chief Justice provided a report to the complaints committee. Her Honour confirmed that she had discussed with him the public's expectation that a justice of the peace must fully comply with rules that govern the use of public funds, including the rules for making claims for travel expenses that arise in the course of carrying out the responsibilities of the position. Her Honour discussed with His Worship ways in which he could ensure that his expense claims would be correct in the future.

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The Chief Justice emphasized the need to be mindful that the monies under discussion were public funds. It is vital that justices of the peace uphold and are being seen to uphold the rule of law outside of court just as their role demands inside the court.

Repayment of the appropriate amount was an important step to preserve public confidence. The vital objective of the complaints process is to restore public confidence in the justice of the peace who is the subject of a complaint, the judiciary, and the administration of justice. Repayment was important to achieve that goal. His Worship demonstrated full co-operation, repaying an appropriate ammount.

Following its review of the report from the Chief Justice, the committee was satisfied that His Worship understood the Court's travel expense policy and that he intended to abide by it. The committee closed the file.

CASE NO. 22-045/11

The complainant filed a complaint against the subject justice of the peace arising from his application for a peace bond.

In his letter of complaint, the complainant made the following allegations:

1) Her Worship imposed a publication ban which in effect caused the hearing to be held in secret and parties who had an interest were not made aware that the hearing was taking place. This action, in the view of the complainant, was in violation of section 2(b) of the *Charter*.
2) There was evidence of a conflict of interest between the justice of the peace and one of the respondents. One of the respondents was an Assistant Crown Attorney in the same judicial region from which Her Worship was appointed. The complainant alleged that during his court attendances, Her Worship and the respondents engaged in friendly conversations, which indicated past dealings and mutual relationships.
3) Her Worship ignored evidence, made errors, blended facts and confused evidence, names and testimonies while giving undue weight to the respondents' positions which led to false conclusions.

4) Her decision showed bias to the extent that she appeared to be acting as the respondents' defence lawyer.

5) In her decision, Her Worship made some racial remarks and distinctions. Her Worship failed to maintain decorum and allowed the respondent to inappropriately and unprofessionally insult the complainant's family.

6) Her Worship did not maintain her objectivity and manifested bias in favour of the respondents. The complainant alleged that when asked about the basis for ordering the publication ban, Her Worship stated that it was because the respondents were members of the legal community and they had asked for it.

7) Her Worship "failed to exercise proper duty of care and judgment", "acted negligently" and "did not maintain her personal conduct at a level which ensured the public's trust and confidence".

The complainant also stated that he disagreed with the decision of Her Worship to dismiss his application and feels that because of conflict of interest, bias and because she ignored the preponderance of evidence, the decision was wrong.

The complaints committee reviewed the complainant's letter, ordered and reviewed the numerous and lengthy transcripts of the proceedings.

The committee observed that the transcript showed that the Assistant Crown Attorney, who was presenting the case and the complainant's position, consented to a publication ban that would make the proceeding private on the basis that the respondents were involved in the administration of justice. The committee could understand how the decision by the justice of the peace to order a private hearing in those circumstances could be interpreted as favouritism. However, the committee found that there was no evidence on the record of any actual favouritism on the part of the justice of the peace towards one party or the other. The record showed that she was fair and objective in dealing with the case.

The committee found that there was no evidence on the record to support the allegation of a conflict of interest between Her Worship and the defendants. The committee also noted that the complainant did not make a request during the proceedings for Her Worship to recuse herself, a step that was open to him to take if he believed that Her Worship had a conflict and that he was being judged unfairly by Her Worship.

The committee also noted that the record did not show any evidence of racial, religious or ethnic bias on the part of Her Worship. Nor did the record support the allegations that Her Worship failed to remain objective or failed to exercise proper duty of care.

As well, the committee observed that the record showed that the complainant was well-represented by the Assistant Crown Attorney who presented the case.

The committee noted that the decision by Her Worship to grant the request for a publication ban was a matter of law that was outside of the jurisdiction of the Council. If the complainant was unhappy with this decision, the proper way to proceed was through legal remedies through the Court.

Overall, after a careful review of the court record, the complaints committee concluded that there was no evidence of judicial misconduct by Her Worship and the review of the correctness of the decision to grant a publication ban was a matter outside of the Council's jurisdiction. The complaint was dismissed and the file was closed.

CASE NO. 22-046/11

The complainant, a prosecutor, filed a complaint about the behaviour and comments of a justice of the peace towards him in Provincial Offences court. The complainant advised that while he was trying to manage the list, His Worship became agitated over the manner in which the list was being called. The complainant alleged that His Worship's tone became annoyed and his voice was raised. His Worship became angry and began shouting at him, yelling that he was not going to proceed with the matters selected by the prosecutor, and ordering him to call other matters. The complainant apologized to the court but explained he believed that the court list was his to call. He alleged that in response, His Worship first calmly agreed but then launched into a "full-scale, frenzied verbal attack on me. He was screaming, half standing and half sitting in his chair and strongly wagging his finger at me. He seemed to be accusing me of dictating to him on how to run his court."

The complainant advised that he feared for his safety. He felt humiliated beyond anything he had ever experienced in a place of work before. He alleged the attack became more frenzied to such a point that His Worship threatened to have him arrested for contempt of court. The complainant alleged that His Worship's behaviour was "nothing less than bullying, harassing, threatening and violent. He portrayed a poor picture towards the

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administration of justice, especially to those people that were in the body of the court. I strongly believe that he abused his position as a Justice of the Peace to such a degree that he did actually bring the administration of justice into disrepute."

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint letter and ordered and received the transcript and audio recording of the court proceeding referenced in the complaint.

The complainant wrote a second letter to the Council. He advised that he had appeared before this same justice of the peace on numerous occasions after the first court date and each time His Worship conducted himself in a very professional and respectful manner. As well, he indicated that he found that His Worship controlled the court in an efficient and effective way that saves time and is beneficial to all parties and court staff. In hindsight, he believed that on the date that gave rise to the complaint, His Worship was trying to move things along in a proficient way. The complainant requested that the complaint be withdrawn. The complainant was informed that the Council does not have legislative jurisdiction to permit a complaint to be withdrawn after it has been filed.

The complaints committee reviewed the transcript and the audio recording of the proceedings related to the allegations made. The committee found that the transcript and the audio recording showed that His Worship appeared to become agitated, impatient and angry. The committee noted that the court record showed that His Worship's conduct contributed to the interactions escalating in a confrontational manner. As well, the committee noted that the transcript showed that, as alleged by the complainant, His Worship told him that he might find himself being taken out of the courtroom by the police because His Worship might cite him for contempt. The committee could understand why the complainant perceived that he was being bullied and felt under attack.

The committee was of the view that there is an obligation on every justice of the peace to take the requisite time to maintain and uphold the high standards of conduct expected by the public. The committee noted the preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that has been approved by the Justices of the Peace Review Council, where it states:

> "The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity

> of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office. All judicial officers are obligated to treat members of the public with courtesy and respect."

The committee invited the justice of the peace to respond to the complaint. The committee observed that in his response, His Worship showed some acknowledgement that he had dealt with the complainant in an unseemly way. The committee could see that His Worship recognized that he had used an inappropriate tone of voice and that he regretted his demeanour on that date. He expressed regret and took some responsibility for his actions.

However, it appeared to the committee after reviewing the response that His Worship may not have fully realized how his conduct was perceived by others, the impact of his conduct on others, and how it can undermine confidence in the judiciary and in the administration of justice generally.

The committee observed that in his response, His Worship explained how there was a busy court docket, and why matters needed to be called in certain ways. However, the committee considered that regardless of how busy a court may be, it is the responsibility of a justice of the peace to endeavour to maintain dignity and decorum in the courtroom at all times. A justice of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office. This requires exercising restraint over one's reactions and utterances, even if frustrated with a particular party. In a courtroom, a justice of the peace must not allow the length of the list and the shortage of time to result in a failure to perform his or her duties with the appropriate level of conduct, regardless of who is appearing before him or her.

The committee chose to provide His Worship with written advice, pursuant to section 11(15)(b) of the *Justices of the Peace Act*, as its final disposition of the matter. The committee encouraged His Worship to have a heightened sense of awareness of his conduct was being viewed by others. In the administration of justice, it is important not only that justice is done but also that justice is seen to be done. It was the advice of the committee that His Worship reconsider his conduct in his dealings with the complainant that day with a view to improving his ability to conduct such matters with the appropriate level of patience. Each and every comment that a justice of the peace makes, his tone and his manner are all important elements of how a justice of the peace is perceived by members of the public.

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The committee noted that the additional information provided by the complainant in his second letter to the Council confirming that after the date in question, there was an ongoing positive professional relationship between himself and His Worship was very helpful to the committee.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations and individuals are treated and handled in the future. In all of the circumstances, the committee was of the view that, having provided written advice to His Worship in this matter, no further action was required and the file was closed.

CASE NO. 22-047/11

The complainant, a paralegal, filed a complaint about a justice of the peace, referring to three court proceedings in which His Worship allegedly made inappropriate comments. In the first court appearance, the prosecutor requested that a provincial offence charge be withdrawn. The complainant advised that the charge was withdrawn because it was the wrong charge. He alleged that the justice of the peace made comments, including saying that the defendant had "dodged a bullet". The complainant stated that the comments were very clear and he alleged that the justice of the peace wanted to punish the defendant simply because of the charge. The complainant observed that the comment about dodging a bullet presumed guilt when there should be a presumption of innocence. The complainant provided a copy of the transcript of the court appearance.

In relation to the second court appearance, the complainant alleged that a resolution had been reached in the case on the basis of a guilty plea to a reduced charge, but His Worship got upset and said he wanted to reject the deal. The complainant alleged that His Worship's comments indicated a presumption of guilt, and he indicated that he tried to explain this to His Worship, but His Worship said there should be a trial. The complainant alleged that impartiality was lost by His Worship expressing his personal opinion.

The complainant alleged that at a third court appearance, "a simple plea resolution ended with [the justice of the peace] calling the defendant in a speeding charge an idiot". He expressed his concern that, "This type of conduct reduces confidence in the legal system." The complainant provided a copy of the transcript, as well as an on-line blog about the incident.

The complainant said that there is an expectation that judicial officers will deal with the public "professionally, impartially and with dignity". He advised that he had lost faith in His Worship and indicated that his rulings are "typically the result of a presumption of guilt and quite frankly not particularly fair". The complainant suggested that His Worship provide a letter of apology to the accused whom he called an idiot and that His Worship undergo mentoring on the principles of fairness or sensitivity training.

The complaints committee reviewed and considered the complaint and the materials enclosed with the complaint, and reviewed transcripts of the three proceedings that were referenced in the complaint letter.

The committee found that the first transcript of the proceeding showed that after the charge was withdrawn, His Worship stated, "This is a very serious matter and you've dodged a bullet." The committee could see how the defendant, the complainant and perhaps others could interpret the comment to mean that he was "lucky" because he was not being found guilty. Such terminology could be seen as inconsistent with a presumption of innocence.

The committee found that the transcript of the second proceeding showed that after the prosecutor indicated that there was a resolution subject to His Worship's approval, His Worship expressed his view that it called the administration of justice into disrepute to plead the charge down. The complainant respectfully intervened, noting that His Worship's comments accepted as a fact that the defendant was guilty when in fact the presumption of innocence has to apply. He pointed out that the justice of the peace's role is to be impartial and referenced a concern about personal views. In the end, His Worship accepted the guilty plea to the reduced charge. The committee observed that His Worship's comments could be perceived as suggesting that he believed that the defendant was guilty of the charge.

With respect to the third proceeding, the committee found that the transcript showed that the prosecutor informed the court that the defendant would be pleading guilty to a speeding charge after the ticket was amended to reduce the speed. His Worship accepted the guilty plea and entered a conviction and did use the word "idiot".

The committee was concerned that His Worship used such language to demean a defendant.

Following its review of the materials, the committee provided the justice of the peace with disclosure of the documents and invited His Worship to provide a response to the complaint. His Worship provided a written response.

The committee noted that the preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

> "The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office."

The committee noted that in the *Principles of Judicial Office*, the standard of excellence expected includes the following:

> "Justices of the peace must be impartial and objective in the discharge of their judicial duties."

Commentaries:

> Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

These *Principles* are valuable guidelines to justices of the peace in carrying out their duties.

The committee noted that in order to maintain confidence in the judiciary and in the administration of justice, justices of the peace need also to be seen to be impartial and objective. Perceptions of a lack of impartiality or a lack of objectivity can negatively affect public confidence in the administration of justice. Judicial officers must be aware of the appearance created by their conduct. They must not only be impartial – they must also give the appearance of being an example of impartiality, independence and integrity.

The committee observed that a justice of the peace is expected to conduct himself or herself with dignity, restraint and professionalism. The commentaries of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* provide helpful guidance in the commentaries:

> Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry the role out with integrity, appropriate firmness and honour.

The committee noted that this provision emphasizes the unique role of a justice of the peace as exemplar and guardian of the dignity of the court.

After its careful consideration of all of the materials and His Worship's response, the committee was concerned that it appeared that His Worship did not fully appreciate the expectations held by the public of the high standards of conduct for persons who hold the office of a justice of the peace, and the negative impacts that can result if those high standards of excellence are not upheld. The committee decided that the appropriate disposition of the complaint was a referral to the Chief Justice, pursuant to section 11(15)(d) of the *Justices of the Peace Act*.

Following her meeting with His Worship, the Chief Justice reported to the committee. The committee noted that the Chief Justice reviewed with His Worship the high standards of conduct expected of persons who hold the office of a justice of the peace, and the negative impacts that can result if those high standards of excellence are not upheld. Her Honour advised that His Worship acknowledged that his conduct on all three occasions that gave rise to the complaint fell below the standard required of justices of the peace in their interactions with litigants in the courts. He expressed regret that he had conducted himself in a manner that could be perceived as biased and lacking in impartiality. With respect to the third incident, His Worship expressed his regret that he had used language which demeaned a defendant.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations handled in the future. Following its review of the report from the Chief Justice, the file was closed.

CASE NO. 22-048/11

The complainant filed a complaint about the conduct of the presiding justice of the peace arising from a court appearance by the complainant's wife arising from a speeding ticket received by their daughter. The complainant indicated that his daughter was stopped for speeding and produced a passport as identification as she did not have her driver's license with her. She also provided the officer with ownership and insurance information that were in the name of her mother. The officer issued her a ticket for speeding naming her mother on the ticket in error.

The complainant indicated that they advised the OPP office of the error but were told to attend in court. The complainant's wife obtained a letter from her employer verifying she was at work on the day of the speeding offence. During her appearance, His Worship "questioned why my daughter did not attend the hearing and my wife provided a logical explanation – she was not named in the ticket." The complainant alleged that the matter "needlessly escalated" to the point where His Worship stopped the proceeding, struck the plea and ordered a criminal investigation to determine whether the daughter "would be subject to impersonation charges under the *Criminal Code*".

The complainant alleged that His Worship "acted improperly" and "overstepped his authority in this matter by threatening my wife and daughter with criminal charges" causing "emotional distress and a significant amount of money to resolve". The complainant indicated that they had to retain a lawyer to assist in resolving the matter. The lawyer was able to have the criminal investigation stopped immediately and was able to get the criminal charge and the speeding charge dropped. The complainant expressed frustration that such a simple error by the police caused such problems.

He stated, "I believe this matter speaks to the issue of access to the courts and the inability of a lay person to resolve even a simple traffic matter without engaging lawyers and incurring hefty legal fees". The complainant provided a copy of the transcript of the court proceedings in support of his concerns.

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint materials provided and ordered and reviewed the audio recording of the court matter. The committee also requested and received information from the law firm retained by the complainant. The law firm confirmed that following their involvement, information was provided to the local Crown Attorney and the criminal investigation was terminated and the speeding charge was withdrawn. The committee also obtained and reviewed the court transcript of a subsequent appearance which confirmed that the speeding charge was withdrawn.

After reviewing all of the materials and the court record, the committee could understand how the complainant and his wife felt. The complainant's wife had attended court on the understanding that she would be able to provide information to the court and the justice of the peace who was presiding would consider all of the facts before making a decision. Instead, with only partial evidence being called from the police, and without any objection from the prosecutor, the justice of the peace unilaterally stopped the trial. He then expressed his view that criminal charges should be pursued.

The committee was concerned about the overall impression about the administration of justice left with the complainant, his wife and perhaps others in the courtroom, as a result of His Worship's actions and his direction to the prosecutor and the police in relation to initiating a criminal investigation. The committee invited His Worship to respond to the allegations.

After reviewing the response, it appeared to the committee that the justice of the peace did not fully understand why his comments and handling of the matter were less than ideal, and that he did not fully appreciate the impact of his comments and conduct on the complainant and his family and on the perceptions that were created about how justice was being administered.

The committee observed that judicial officers must be aware of the high expectations of conduct of justices of the peace and aware of the appearances created by their conduct. They must not only be impartial – they must also give the appearance of being an example of impartiality, independence and integrity. Each and every comment, and the tone and manner in which it is made, are all important elements of how a judicial officer is perceived by members of the public.

The preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that have been approved by the Justices of the Peace Review Council in part states:

> The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

As well, the *Principles* state:

> 1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.

Commentaries:

> Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

1.2 Justices of the peace have a duty to follow the law.

Commentaries:

> Justices of the peace have a duty to apply the relevant law to the facts and circumstances of the case before the court and to render justice within the framework of the law.

These *Principles* are valuable guidelines to justices of the peace in carrying out their duties.

A justice of the peace is expected to be an impartial decision-making who, after a fair hearing, makes a determination on the facts. When that does not occur, and when the justice of the peace decides instead to voice his sentiments without hearing and assessing the evidence, and without due process, there is a danger that a perception is left with members of the public that the justice of the peace is not an independent, impartial decision-maker. Impartiality starts from the assumption that the judicial officer should not have any prejudice or predilection. A justice of the peace must have no reason to favour or disfavour either party appearing before him. Disfavouring one of the parties may, for example, consist of making remarks which suggest that the justice of the peace is convinced of the guilt of the accused before hearing all of the evidence.

A justice of the peace must remain open-minded during a case, refraining from deciding what happened in that case until all of the evidence has been presented and submissions have been made. This does not mean that a justice of the peace may not form opinions during a case. Rather, the justice of the peace must remain open to receiving new facts, arguments and interpretations during a case. Justice must be seen to be done in order to have confidence in the administration of justice.

The Review Council, and by extension, every complaints committee, has the role of maintaining and preserving the public's confidence in judicial officials and in the administration of justice through its review of complaints. The approach is remedial. Through the review of and reflection upon one's conduct improvements are made as to how situations and individuals are treated and handled in the future.

For those reasons, the committee decided that the appropriate disposition to this complaint was a letter of advice pursuant to section 11(15)(b) of the *Justices of the Peace Act*.

In its advice to His Worship, the committee reviewed all of the concerns that were raised by the complainant. The committee provided advice on the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* and the commentaries as set out above. The committee urged His Worship to reflect further upon the concerns that were raised and upon his conduct. The committee encouraged him to consider the role that is played by a justice of the peace, and the importance of ensuring and demonstrating impartiality and fairness in carrying out the duties of judicial office. As well, the committee advised him to consider how fairness and objectivity of a justice of the peace, and perceived fairness and objectivity, play a vital role in maintaining confidence in the administration of justice.

The advice of the committee was to assist His Worship in further reflecting upon his conduct in this matter, and perhaps others, and in fully understanding and appreciating the importance of the impressions and perceptions that may be left with members of the public if one's conduct or comment is less than the high standard expected of justices of the peace. The conduct of a justice of the peace plays a vital role in building and maintaining the public's respect and confidence in an individual judicial officer, in the bench, and in the justice system.

Having provided its advice, the committee closed the file.

CASE NO. 22-049/11

The complainant, a lawyer, appeared in Provincial Offences Court. She stated that after speaking to her client's case, she was unexpectedly questioned about two other matters which were previously completed and resolved that involved related *Criminal Code* matters before a judge of the Ontario Court of Justice. She alleged that in front of a full courtroom, "an inquisition" of her took place by the justice of the peace and the prosecutor. She indicated that the inquisition lasted about thirty minutes and that the derogatory comments and physical actions of the presiding justice of the peace and the prosecutor served to denigrate her client's rights and privileges, along with her own professional and personal character. She also alleged that "this harassment and public

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humiliation" continued despite her respectful objections. The complainant stated that the justice of the peace did not have Informations before him on those matters and had no jurisdiction to address them.

She stated that "it is my belief that the transcript will illuminate a clear and present bias by the Court who operated without any regard for the rule of law or fairness." She also indicated that it was her perception that the justice of the peace and the prosecutor had out of court discussions. She alleged that the words and actions of the Court that day brought the administration of justice into disrepute.

The complaints committee ordered and reviewed the transcript and the audio recording of the proceedings. After its review of the transcript and the audio recording, the committee found that the record did not support the allegation that there had been an inquisition of the complainant or that His Worship made derogatory comments that would have denigrated her client's rights and privileges, or that would constitute harassment or public humiliation.

Rather, the committee observed that the court record showed that the complainant appeared on a number of brief adjournments. Then, when another defendant's name on the court docket was addressed, the prosecutor noted that the matters had been removed from the list and transferred to criminal court. The complainant informed the Court that she was representing him. The prosecutor raised concerns about files being transferred from provincial offences jurisdiction. The justice of the peace also made the point that legal issues could arise with transferring some of the charges, as there could be difficulties in determining the appropriate appeal court on such matters if they were transferred.

A dialogue took place about the legality of provincial offence charges being moved to criminal court, and discussion followed about the jurisdiction of municipally-operated courts over provincial offences. Although the record showed that the complainant expressed to the Court her belief that she was the only female lawyer who was called on to explain things in her representation of her client, the record also showed that His Worship explained to her that the issue was a procedural matter that would be dealt with internally, and told her that it was not her fault, no-one was blaming her and no-one was accusing her.

With respect to the allegation that the court record would show a clear and present bias by the Court who operated without any regard for the rule of law or fairness, the committee found that the record did not support the allegation. The record showed that the dialogue related to legal issues arising from particular circumstances associated with the transfer of provincial offences to criminal court. His Worship provided the complainant an opportunity to speak to the issues, and with a second opportunity to make further comments. There was no evidence of bias, or a lack of fairness in how His Worship addressed the matters. As well, the transcript showed that the complainant thanked the justice of the peace for letting her speak and for the liberty that he showed.

The committee also found that the dialogue on the record did not provide any evidence that suggested that the justice of the peace and the prosecutor had discussions outside of court. Nor was the dialogue consistent with the suggestion that there were actions by the presiding justice of the peace that served to denigrate the rights and privileges of the complainant's client, or her professional and personal character.

With respect to the allegation that His Worship dealt with matters when the Informations were not before the Court, the committee observed that the defendant's name was listed on the court docket for a number of charges. The committee noted that if the complainant wished to raise a legal argument about the jurisdiction of His Worship to question why the matters were not before him, the way to proceed would be through legal remedies in the courts. The Council has no jurisdiction to determine questions of law in a court case.

For those reasons, the committee concluded that there was no evidence of judicial misconduct and dismissed the complaint.

CASE NO. 22-050/11

The complainant filed a complaint about the justice of the peace who presided over his trial in relation to a charge under the *Employment Standards Act*. The complainant was convicted of the offence. He alleged that Her Worship was biased and prejudiced, and that she condoned abusive and racially motivated behaviour on the part of the Employment Standards officer, who had laid the charge against him.

The complainant indicated that Her Worship "disallowed most of the relevant questioning by my lawyer" and showed "irritation" towards the lawyer in the questioning of the officer and insistence on getting the correct regulation for fines. He alleged that Her Worship was dismissive and impatient throughout the trial and seemed to have "made up her mind before the trial". He stated that Her Worship "condoned an abusive and racially motivated behaviour of [the Employment Standards officer], who abused her authority to take revenge on confrontation between myself and [the [Employment Standards officer]". The complainant indicated that Her Worship "ignored the background behind the vendetta by [the Employment Standards officer]" and became an "enforcer to abusive and racial attitude" of the officer. The complainant stated that Her Worship was not fair and independent in hearing his matter.

The complaint was assigned to an investigating complaints committee. The committee reviewed the correspondence and ordered and reviewed the transcripts of the two appearances relating to the complainant's court matter. After careful review, the committee found that the court record did not support the allegations made by the complainant.

The committee found no support in the court record for the allegation that Her Worship disallowed most of the relevant questioning by the complainant's lawyer or that she imposed a fine without legal or authoritative basis, as alleged. The committee noted that the complainant, in giving his evidence, appeared to be both annoyed and emotional about the manner in which the Employment Standards officer had questioned him and her demands of him during her inspection of his business, which he stated that he found to be embarrassing and insulting. The record showed that Her Worship advised the complainant that his issues with respect to the officer's conduct during the inspection, which included allegations of racial and cultural elements, were matters that would need to be addressed through the officer's superior. The court's focus was on the charge before the court.

The complaints committee noted that it had no jurisdiction to review the conduct of the Employment Standards officer. If the complainant was unhappy about the treatment he received from the officer, the appropriate course of action was to make a complaint to her supervisor.

In reviewing the court record, the committee noted that Her Worship made remarks to the officer, the complainant's lawyer and the complainant during the course of the trial which were viewed by the committee as attempts on the part of Her Worship to focus all parties on the infraction that was the subject of the trial before the court, rather than having them get into issues and matters beyond the jurisdiction of the court.

The committee found no evidence of bias or prejudice. The committee found no evidence that Her Worship condoned or became an enforcer of abusive and racially motivated behaviour of the Employment Standards officer, as alleged.

For the above reasons, the complaints committee dismissed the complaint as unsupported by the court record and closed its file.

CASE NO. 22-051/11

The complainant appeared before the subject justice of the peace in relation to her trial for a charge of parking on private property.

The complainant alleged that "before the judge ruled that he did not believe me, he inappropriately stated that he doesn't see why I have a handicap parking permit (having nothing to do with my case) when I can walk to the podium". The complainant also stated that it was "obvious that my physical appearance biased him to think that I was not credible". She further stated in her letter that His Worship "not only ruled me to be a liar, but also the medical professional who signed my handicap form". The complainant expressed that "this judge was very unethical and it saddens me to see such things".

The committee reviewed the complaint letter and requested and reviewed the transcript and audio recording of the court appearance. After careful review of the court record, the committee found that the transcript showed that during submissions, the complainant mentioned her handicap permit when referring to her awareness of the signs in the parking lot. The transcript also showed that during his decision, His Worship made the comment, "you also mentioned that you have a handicap permit and, when I see you walk back and forth here, I don't see – I am not saying that you are not disabled in some way, but that is not before the court, a handicap permit…". Although, the committee found that the comment was unnecessary and irrelevant to the consideration to the charge before the court; the comment did not constitute judicial misconduct.

The committee concluded that the remaining allegations related to how His Worship weighed the evidence and made findings of fact and to the complainant's disagreement with His Worship's decision. These matters relate to questions of law and the proper way to pursue such matters was through the courts. Such matters are outside of the jurisdiction of the Justices of the Peace Review Council.

For the reasons noted, the complaints committee dismissed this complaint and closed the file.

CASE NO. 22-052/11

The complainant read a newspaper article reporting on decision a justice of the peace to acquit a person charged with an offence under the *Fish and Wildlife Conservation Act*. The complainant sent a letter of complaint with a copy of the newspaper story to the Review Council and stated that her primary purpose in writing the letter "is not to complain as much as it is to educate and raise awareness".

She indicated that the statements made by Her Worship in her reasons "set a very bad precedent, send the wrong message and are also technically incorrect". She explained that there are a thousand or more violations each year under the *Fish and Wildlife Conservation Act* each year, and that requires significant resources to investigate and gives rise to an enormous workload for investigators. She alleged that when Her Worship stated that the case was "too trifling" to come before the court, this reinforced "the idea that wildlife violations are not important and the courts do not see them as important either". She believed that this may encourage people to fight their tickets instead of paying for the offences they have committed.

The complainant stated that Her Worship erred technically when she said "the purpose of the legislation is meant to apply to poachers and illegal wildlife trafficking". She stated that if Fish and Wildlife violations are dismissed as "too trifling" or because they are perceived as only applying to traffickers, the incidents among the general public will rise and organized traffickers have an open invitation to sell items on line, as well as to hunters who would sell the items to offset the costs of their sport.

She disagreed with Her Worship's finding of not guilty and alleged that it "sent out what I believe are very harmful messages that will simply encourage people to think that Fish and Wildlife violations are not very important to the courts".

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint letter and the newspaper article, and ordered the transcript of court proceeding referenced in the complaint.

With respect to the complainant's disagreement with how Her Worship assessed the evidence and her decision to acquit the defendant, the committee noted those are matters of law that would be within the jurisdiction of a court to review. The Review Council's jurisdiction is to consider and decide upon complaints about the conduct of justices of the peace.

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The committee noted from the court record that a trial took place a few weeks earlier and was adjourned for Her Worship to deliver her reasons and decision orally in court. The transcript of the date when Her Worship gave her judgment confirmed that she made a detailed assessment of the evidence and provided well thought out reasons for her findings and her decision. The record also showed that Her Worship was very aware of the purpose of the *Act*, noting that the "primary purpose of the *Act* is to promote the conservation of fish and wildlife in the province".

The committee found that the newspaper misquoted Her Worship. Rather than saying, that the *Act* "is clearly meant to apply to poachers, iilegal wildlife trafficking and to conserve wildlife", the transcript showed that her comment was "again, the purpose of the legislation is to prevent poaching specifically and to promote the conservation of species of fish and wildlife".

With respect to the quote attributed to Her Worship that the case was "too trifling" to come to court, the transcript confirmed that Her Worship used the word "trifling" in the context of the technical legal term "*de minimis non curat lex*". The record showed that Her Worship went into detail in explaining this legal maxim and quoted case law which referenced the legal definition of "trifling", as opposed to the general use of the term. The committee found that the court record showed that there was no evidence that Her Worship said or suggested that charges under the *Fish and Wildlife Conservation Act* in general are too trivial to warrant court time or resources. Rather, Her Worship concluded that the principle of *de minimus* was applicable to the facts of the particular case and on that basis could be dismissed.

After a careful review of the court record, the committee found no evidence of judicial misconduct on the part of Her Worship. For the aforementioned reasons, the committee dismissed the complaint and closed its file.

CASE NO. 23-001/12

The complainant filed a complaint about the presiding justice of the peace in relation to his conduct during her court appearance. The complainant indicated that she had received a ticket for an illegal turn and had attended for a scheduled court appearance. She indicated that the police officer told her to meet with the prosecutor beforehand to try to get a reduced fine. The prosecutor agreed to reduce the charge and told her to wait and meet with the justice of the peace.

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The complainant indicated that she met with the justice of the peace and "found him to most unpleasant, rude and nasty." She alleged that His Worship "was not at all interested in what I had to say and I was disrespectfully dismissed." The complainant stated that her concern was not that the justice of the peace did not reduce the fine but that he was most disrespectful, without provocation, and that "fine reductions appear to be based on whim not fairness". She also stated that he gave her 90 days to pay with no explanation that there would be further charges added.

The complainant expressed that she resented "being treated with such disdain and I understand one of the qualifications for an Ontario Justice of the Peace is 'Politeness, compassion, empathy and respect for the dignity of all persons".

The committee reviewed the complaint letter and ordered and reviewed the transcript of the court appearance in question. The committee also listened to the audio recording of the proceedings. After careful review of the court record, the committee found that there was no evidence of misconduct on the part of His Worship in his handling of the matter before him or in his conduct or comments towards the complainant. The committee observed that His Worship's tone and demeanour were consistently calm and patient while dealing with her guilty plea. The committee found no evidence that His Worship was "disrespectful" or "unpleasant, rude or nasty", as alleged. The committee noted that the additional financial charges were administrative charges and not any additional amounts imposed by the justice of the peace.

The committee dismissed the complaint as not supported by the court record and closed the file.

CASE NO. 23-002/12

The complainant wrote to the Council alleging that during his wife's trial the presiding justice of the peace appeared to be irritated because the defendant's use of a Polish interpreter slowed down the progress of a trial. He also alleged that Her Worship was biased against the defendant as she was uninterested in whether the evidence of the prosecutor made any sense. She didn't ask questions to clarify or check the credibility of the prosecutor's witnesses. He alleged that the defendant did not have the skills or experience necessary to show that the prosecutor's evidence was not true. He raised the fact that section 11 of the *Charter* guarantees Canadians a fair trial and asserted that the justice of the peace "should have clarified the truth to find out what really happened rather than ignore the truth impatiently waiting for the end of the prejudiced trial and the start of her weekend".

A letter was sent back to the complainant to clarify that the Council has no authority to intervene in reviewing or changing decisions made by a justice of the peace and that if there was a disagreement with the decision made, other legal remedies could be pursued. Within the letter, further particulars were sought as to how the use of the Polish interpreter appeared to irritate Her Worship and as to the allegations of bias and failure to ensure a fair hearing.

The complainant responded alleging that Her Worship:

- Before the end of the trial, made a gesture to the prosecutor to let her know that the case was prejudiced and that the defendant would be convicted. That suggested a conflict of interest;
- Didn't like the defendant because she choose to use a Polish interpreter, which slowed the progress of the trial;
- Allowed the prosecutor to show her frustration by interrupting every sentence of the defendant's witness with "objection" to stop him from talking;
- Remarked "not to strain the system", showing her frustration that the trial was taking too much time;
- Showed her bias in her decision to reject the defendant's testimony and ignoring evidence and using biased reasons that were not applicable;
- Displayed a lack of interest in the testimonies of the defendant's accusers which did not make sense;
- Was prejudiced;
- Did not want to show the perjury of the prosecutor's witness perhaps because she wanted to convict the defendant and she was looking the other way;
- Gave reasoning on the damages of the vehicles that was not professionally supported by the evidence of the collision expert, which the complainant doubts that she had seen.

The complainant requested that the original court tapes from the trial be reviewed.

The committee reviewed the complaint letter and ordered and reviewed the transcript and portions of the audio recording of the trial in question. After careful review, the committee found that the court record failed to support any of the allegations made against Her Worship. The committee noted that Her Worship was professional and patient throughout the trial, provided the defendant with an opportunity to speak fully to her matter, answered the defendant's concerns about delay and disclosure and ensured she was assisted by a Polish interpreter and that information was presented slowly and in manageable portions to facilitate interpretation. It was further noted that Her Worship explained court procedures and ensured that the defendant understood the proceedings. The committee found no evidence that Her Worship was irritated with the defendant or that the use of the interpreter contributing to the trial taking too long. The committee noted that the total trial took approximately four and a half hours, resulting in Her Worship making arrangements to take a shortened lunch and clearing her afternoon docket in order to hear all of the evidence in this matter in one day. The committee further noted that at the end of the defendant's evidence she remarked, "Thank you Your Worship for listening to me, for showing much patience, for letting me testify according to the truth the way it actually occurred." The record did reflect that Her Worship commented, "You are wasting court resources", as alleged in the complaint. This comment was made near the end of evidence of the defendant's final witness, the complainant; however, the remark was made in a matter of fact and even-toned manner in the context of repeated direction to the defendant to break up her questions to allow for easy interpretation and to not ask questions that would result in hearsay evidence from her husband.

For the aforementioned reasons, the complaints committee dismissed the complaint about Her Worship's conduct as not supported by the court record and closed its file.

CASE NO. 23-003/12

The complainant, the father of the defendant, filed complaints about four justices of the peace who were involved in four separate court appearances in regards to his son's speeding charge. The complainant, who was acting as a representative for his son, appeared before the subject justice of the peace and indicated that he had filed a motion under section 11(b) of the *Charter* and had properly served all parties. He alleged that His

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Worship "adjourned the trial without telling the reason, even after asking" and then "set the trial date without asking the defendant if the date is OK".

The committee reviewed the complaint letter and ordered and reviewed the transcript, and listened to the audio recording of the court appearance in question. After careful review of the court record, the committee found that there was no evidence that His Worship "adjourned the trial without telling the reason, even after asking", as alleged by the complainant. The transcript showed that His Worship explained that he was adjourning the matter so that the complainant and his son could obtain legal advice. Although a justice of the peace cannot force a defendant to obtain legal advice, it was clear to the committee that in this case, His Worship's intention was to assist the complainant and his son by suggesting they seek advice. By adjourning the matter, he was giving them the opportunity to obtain legal advice, and the opportunity for the father to get clearer instructions from his son.

Additionally, there was no evidence that His Worship "set the trial date without asking the defendant if the date is OK", as alleged in the complaint. The committee found that the court record reflected that the defendant was represented by his father, and when the date was suggested to the father, the father replied "Ok" and did not raise any concerns about the date.

For the aforementioned reasons, the committee dismissed the complaint as not supported by the court record and closed the file.

CASE NO. 23-004/12

The complainant, the father of the accused, filed complaints about four justices of the peace who were involved in four separate court appearances in regards to his son's speeding charge. The complaints about the first two justices of the peace contained no suggestion of misconduct but rather expressed displeasure with the decisions made. As a result, files were not opened in relation to those appearances.

Following a review of the concerns expressed about the third and fourth court appearances, files were opened to assess whether there were conduct issues on the part of the presiding justices of the peace. This complaint was in relation to the conduct of the presiding justice of the peace during the fourth and final court appearance.

The complainant, who was acting as a representative for his son, indicated that he wished to present a Section 11b *Charter* motion. He indicated that, "His Worship denied the defendant 11B application only because the AFFIDAVIT OF SERVICE (Form 16B) was signed by the defendant's representative". It was alleged that "when the defendant tried to argue about 11B, the justice of the peace stopped the defendant and insisted on his decision." He alleged that during the trial when he was attempting to raise doubt about the prosecutor's witness, His Worship commented, "you were not at the scene, so I don't even give my consideration about what you said." The complainant indicated that His Worship failed to give consideration to his arguments and convicted his son.

The committee reviewed the complaint letter and ordered and reviewed the transcript and audio recording of the court appearance in question. After careful review of the court record, the committee found that there was no evidence of misconduct on the part of His Worship in his handling of the matter before him or in his conduct or comments towards the complainant. The committee observed that His Worship's tone and demeanour were consistently calm and patient during the court appearance. The committee concluded that complaint was based on the complainant's disagreement with how the justice of the peace determined the issues and with his decisions. The way for the complainant to proceed if he was unhappy with how His Worship considered the evidence or with his decisions was through legal remedies in the courts.

The committee dismissed the complaint as outside of the jurisdiction of the Justices of the Peace Review Council and closed the file.

CASE NO. 23-005/12

The complainant, a lawyer, sent a complaint letter about a justice of the peace who was presiding in Provincial Offences court when he attended to represent himself on a charge against him. The complainant indicated that before entering court he was "informed by colleagues that I would encounter the worst possible non-lawyer JP whose reputation for authoritarianism, lack of partiality and disregard for the rules of evidence, among other failings, are well known among lawyers and paralegals". The complainant stated in his letter that he was made aware that "appeals against his [His Worship's] questionable decisions are frequent" and of numerous complaints filed against him including being previously reprimanded by the Superior Court. The complainant stated that despite this, "no changes in his authoritarian demeanour or arbitrary decision-making processes have been noticed". He referred the Council to the transcript and audio recording of the proceedings to identify the blatant misconduct and lack of skills, abilities and "adaptive Personal Characteristics" of His Worship.

The complainant alleged that prior to the trial, His Worship yelled at him to stop reading in his courtroom and told him to leave the courtroom. The complainant explained to the committee that it was common practice to review files while waiting and he felt that if His Worship has "special rules for his courtroom, he should make them public". The complainant asked the Council to listen to the audio recording to appreciate the shouting, rudeness, interference and incompetence, which was conduct he had not previously seen in his many years of practice.

The day after receiving the complaint, the Review Council received a further letter from the complainant advising that he wished to withdraw the complaint and raise the issues at the appeal level instead. The complainant was informed of the Council's policy that it has no legislative authority to withdraw a complaint.

In light of the information that there would be an appeal, the complainant was also informed that if a complaint raises allegations of conduct about a justice of the peace who is presiding over a court proceeding, the Review Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This will ensure that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters. After the committee received confirmation that there was no appeal pending, a complaint file was opened for investigation.

The complaints committee reviewed the letter from the complainant and ordered and reviewed the transcript of the proceedings in court during the particular session that day. The committee also ordered and listened to the audio recording of the proceedings. The committee found that the court record confirmed that His Worship abruptly told the complainant not to read in the courtroom, saying "in my court, thank you. I don't know if you noticed it's not a library."

In relation to the complainant's trial, the committee had concerns about His Worship's manner and tone during the proceedings. The audio recording showed that His Worship was abrupt, loud, curt, argumentative and harsh with the complainant during the proceedings.

The committee noted the high expectations the public places on the conduct of judicial officers. Judicial officers must be aware of the appearance created by their conduct. They must not only be impartial – they must also give the appearance of being an example of impartiality, independence and integrity.

The committee observed that the preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, which have been approved by the Justices of the Peace Review Council, states in part:

> The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

As well, the *Principles* state:

> 1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.
>
> *Commentaries:*
>
> Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

The committee also considered the importance of a justice of the peace refraining from being confrontational or demonstrating a harsh manner or tone of voice. Another Commentary in the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

> Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

These *Principles* are valuable guidelines to justices of the peace in carrying out their duties.

The committee invited His Worship to respond to the allegations. The committee observed that His Worship provided a thoughtful response that demonstrated that he had carefully listened to the full audio recording of the proceedings, and he had sincerely reflected on his conduct in the courtroom on that date. His response showed a good appreciation of the impact of his conduct on the public's confidence in him as a judicial officer and in the administration of justice overall.

The committee found that the general allegation that His Worship had a poor reputation among lawyers and paralegals appeared to be based on hearsay. The committee drew no inferences from that information. However, the committee noted that His Worship's response showed that he was concerned about the allegation and that he intended to work diligently to maintain and improve his reputation, and to strive to maintain a polite and positive attitude in court.

With respect to his conduct in the courtroom on the day in question, the committee could see from his response that he had fully understood the concerns with his manner and tone. The committee found that His Worship agreed that it was acceptable for a lawyer to be reviewing his file or notes or disclosure prior to his or her matter being addressed. His Worship offered a sincere apology to the complainant for this incident and for any embarrassment that may have resulted.

As well, His Worship expressed his regret for his tone and manner during the proceedings and offered his sincere apology to the complainant.

Pursuant to section 11(15)(b) of the *Justices of the Peace Act*, with an objective of avoiding any similar situations in the future, the committee provided His Worship with written advice as its disposition of the matter.

The committee emphasized to His Worship the obligation of every justice of the peace to take the requisite time to maintain and uphold the high standards of conduct expected by the public that will preserve that faith and trust the society places in the men and women who have agreed to become justices of the peace. The committee also advised His Worship of the importance of having a heightened sense of awareness of how his conduct is being viewed by others. The conduct of a justice of the peace plays a vital role in building and maintaining the public's respect and confidence in an individual judicial officer, in the bench, and in the justice system.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations and individuals are treated and handled in the future. The committee could see that His Worship had sincerely and seriously reflected upon his conduct and demonstrated a genuine willingness to learn from the complaint. He regretted his behaviour on the day in question, and expressed sincere apologies through the committee to the complainant. After providing its advice, the committee was of the view that no further action was required and the file was closed.

CASE NO. 23-006/12

The complainant appeared on behalf of her daughter for a trial on a charge against her daughter under the *Highway Traffic Act*. The complainant indicated that she was "shocked at that terror imposed" by His Worship "on what appeared to be 50 or more other victims in the court room that day, whom I am sure originally started out in good faith with a glimmer of hope that they would obtain their opportunity in speaking, their chance at justice, as promised them by law as also their personal rights; that day taken from them". She alleged that while defendants were in the progress of signing in with the prosecutor, His Worship "stumbled in disruptively, hollering for everyone to 'SIT DOWN!'". She indicated that within the first five minutes, she witnessed His Worship yelling and scowling at a man who had picked up the wrong paperwork.

She alleged that His Worship continued his "berating" behaviour and "proceeded to devoid the court attendants that day in less than half hour, each and everyone found guilty." She also alleged that His Worship displayed "resentment, intimidation and bias toward the varied crowd that day, assuming them all guilty even before they had spoken a word, a few seconds each to sentence as if annoyed at the aspects of their presence."

The complainant indicated that His Worship then called upon those wishing to have a trial and "proceeded with what seemed to me to be a five minute intimidation speech geared towards the remaining three of us, strongly suggesting that we giving up our trial rights, heavily recommending, in other words, a guilty plea, this before he knew any information, given that the initial signing in with the court persecutor had been abruptly interrupted at the beginning of the court process." She stated that His Worship insinuated "that there never is any worthy plea in such cases, suggesting that laymen like us couldn't possibly understand. Further, in an appalling manner, proceeded to flatly outwardly stated, that, there are no proper traffic defences possible.... he proceeded to very sternly suggest that if we proceeded to exercise our right of trial that we would be sorry, that we would not like the results."

She alleged that prior to the start of her trial, His Worship provided her again with "very stern warnings and threats which at this point seemed almost surreal." She proceeded with the trial and stated that "from the beginning to the ending of the trial, I was interrupted, bamboozled to stop, constantly threatened that there could be nothing I could say any further where I had not even began to state my case." She stated that she was not provided with an opportunity to finish her arguments and questions "as the Justice wanted to wrap it up even before had time to finish questioning." She indicated that upon her closing summation, His Worship "seemed to be sighing, seemingly uninterested, a decision was provided within seconds without thought or reasoning." In the end, His Worship registered a conviction and imposed "an even heavier fine from original $325 to $400 when all the previous cases that day in similar situation, each judged guilty, awarded only $130.00". The complainant felt that "this was an obvious intimidation of having a trial".

The complainant sought to have the Review Council review His Worship's conduct and the outcome of the trial. She stated that "I am left questioning why our country continues to fund justice systems that have become the bullies."

The complainant was informed that the Review Council has no jurisdiction to review or change the outcome of court cases. The allegations related to conduct were investigated by a complaints committee.

The complaints committee reviewed the letter of complaint and requested and reviewed the transcript of the proceedings in court before the justice of the peace during the period of time when the complainant was in court. The committee also requested and listened to the audio recording of the proceedings.

The committee could understand why the complainant perceived His Worship's comments and conduct to be intimidating and bullying. The court record showed that His Worship made comments such as, "I haven't heard a defence yet in all my years on this bench" and "…if you're going to get up there and give me an explanation, do not look to me for mercy. Too late." The committee could see how such comments gave rise to a perception of intimidation on the part of the complainant. As well, his tone and manner were concerning.

The committee found that the court record showed that during the trial on the charge against the complainant's daughter, His Worship interrupted the complainant and it appeared that he was impatient with her at times. On a few occasions, it appeared that he was sarcastic towards her. The committee noted that the complainant made comments during the trial which suggested she did not understand the procedure. Following the trial, His Worship registered a conviction and did not provide an opportunity for the complainant to make submissions on penalty or on time to pay.

The committee noted that a justice of the peace has a responsibility to ensure that defendants have a fair trial and are afforded due process. A justice of the peace should avoid making comments that may be perceived as disparaging or gratuitous. A justice is expected to be patient, dignified and courteous to litigants. The justice of the peace is expected to be the exemplar and guardian of the dignity of the court.

The committee invited the justice of the peace to respond to the allegations. After reviewing the response from His Worship, the committee observed that His Worship had carefully listened to the audio recording of the proceedings and had reflected on his conduct. The committee could see that he realized that the complainant had felt intimidated and bullied. He acknowledged that he had made inappropriate comments and that his tone and manner had created a very negative perception.

The committee could see that His Worship sincerely acknowledged and regretted the negative impacts of his conduct and comments. He took full responsibility for his behaviour towards the complainant and others on that day. Through a review of his conduct, he better appreciated the ways in which he should conduct proceedings in the future so that persons appearing before him would not feel that their cases did not receive a fair hearing before an impartial justice of the peace.

His Worship expressed a sincere apology to the complainant for the negative impression of the justice system that was left with her by his conduct.

The committee noted the high expectations the public places on the conduct of judicial officers. Judicial officers must be aware of the appearance created by their conduct. They must not only be impartial – they must also give the appearance of being an example of impartiality, independence and integrity.

While the committee understood that a courtroom can be a demanding place with a busy docket, the committee noted that regardless of how busy a court is, there is an obligation on every justice of the peace to take the requisite time to listen to individuals before him or her, to explain what is occurring so that they can properly understand the proceeding. This is particularly important if the individual before them is self-represented.

The committee observed that the preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, which has been approved by the Justices of the Peace Review Council, states in part:

> The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

As well, the *Principles* state:

> 1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.
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> Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

Another Commentary in the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

> Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

These *Principles* are valuable guidelines to justices of the peace in carrying out their duties.

Pursuant to section 11(15)(b) of the *Justices of the Peace Act*, the committee provided His Worship with written advice as its disposition of the matter.

The committee emphasized to His Worship the obligation of every justice of the peace to take the requisite time to maintain and uphold the high standards of conduct expected by the public that will preserve the faith and trust that society places in the men and women who have agreed to become justices of the peace. The committee also advised His Worship of the importance of having a heightened sense of awareness of how his conduct is being viewed by others. The conduct of a justice of the peace plays a vital role in building and maintaining the public's respect and confidence in an individual judicial officer, in the bench, and in the justice system.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations and individuals are treated and handled in the future. The committee could see that His Worship had sincerely and seriously reflected upon his conduct and demonstrated a genuine willingness to learn from the complaint. He regretted his behaviour on the day in question, and expressed a sincere apology through the committee to the complainant.

After providing its advice, the committee was of the view that no further action was required by the Review Council and the file was closed.

CASE NO. 23-007/12

The complainant sought to contest a *Highway Traffic Act* violation. He attended court and the case was adjourned to another date. He filed a complaint against the presiding justice of the peace. The complainant stated that he waited for hours and watched the cases lined up before the court and "got a deep impression that the prosecutor and the [justice of the peace] had talked each other like old friends chat that morning".

He stated that when he presented his argument document, the justice of the peace read it in minutes. He raised concerns that when the police officer was called in and the court clerk gave feedback that the police officer was sick, "the [justice of the peace] announced to me that the officer was sick without showing any evidence". The complainant alleged that either the justice of the peace knew the officer wasn't notified about the hearing and announced his sick absence; or, the justice of the peace was biased and believed the prosecutor's word completely without requesting any evidence that the officer was sick. The complainant stated that "on either situation, the [justice of the peace] was violating basic code of conduct, which were the universal and basic requirements for a [justice of the peace]". The complainant indicated that his evidence clearly showed that the officer wasn't notified of the court hearing. The complainant also complained to the Director of Provincial Offences and provided a copy of the Director's response to the Council.

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint letter and attachments and ordered and reviewed the transcript of the complainant's court appearance.

The complaints committee noted that the Director of Prosecution's letter confirmed that he had reviewed the court record and sought information from the prosecutor as to the events of the day. The Director's letter to the complainant also confirmed that the officer had been properly notified of the court date and that the information available was that he was sick on the date in question. The Director explained that the prosecutor made the routine request for an adjournment having regards to the circumstances.

The committee confirmed through the court record that the complainant was consulted during the court appearance about the prosecutor's request and he consented to the adjournment. The committee noted that at no time during the proceeding did the complainant ever raise concerns about the officer not being in attendance or any issues about proper notice having been given to the officer to attend court. The committee concluded that there was no evidence of any bias or misconduct in Her Worship's handling of the matter in this brief court appearance.

For the aforementioned reasons, the committee dismissed the complaint.

CASE NO. 23-008/12

The complainant sent a letter about the justice of the peace who presided over her peace bond proceeding. The complainant alleged that Her Worship demonstrated unprofessional conduct during the proceedings. The complainant indicated that Her Worship's reaction to photographic evidence that the Crown Attorney was presenting to her, "both verbal and non-verbal, displayed disrespect and disbelief".

The complainant also alleged that Her Worship "went out of her way to humiliate me by repeatedly stating my full name, including salutation, several times as if she were trying to punish or scold me." Further, she alleged that Her Worship was condescending in her tone, language and presentation, basing some of her rationale on information and thoughts not presented in the evidence. She stated that, "I am the victim and deserved to be treated with decency, respect and compassion, not with the disdain and disrespect I received. It appeared to be that she was trying to punish me for bringing this matter forward."

She further alleged that Her Worship did not demonstrate any of the personal characteristics and qualities listed under the selection criteria established for the appointment of justices of the peace in Ontario. The complainant stated that "the behavior and conduct of Justice of the Peace [name redacted] represents misconduct and as such, she should be removed from the bench."

The complaints committee reviewed the complainant's letter and ordered and reviewed the transcript of the proceedings before Her Worship. One member of the committee listened to the audio recording of the proceedings in its entirety. The committee found that the court record did not support the complainant's allegation that Her Worship's reaction "both verbal and non-verbal, displayed disrespect and disbelief". The committee found that Her Worship conducted herself with decorum throughout the entire proceeding and there was nothing in her demeanour and/or tone that indicated disrespect, disdain or condescension.

The issue raised by the complainant that the subject justice of the peace did not demonstrate the personal qualities and characteristics in the selection criteria established for the appointment of justices of the peace in Ontario was not supported by the court record. The committee also noted that the record showed that there was nothing to suggest that Her Worship humiliated or attempted to humiliate anyone, including the complainant, in any way during the proceedings.

The committee observed that it appeared that the complainant disagreed with how the justice of the peace assessed the evidence and determined the issues, and with her decision; however those are questions of law and the proper way to pursue such matters was through the courts. Such matters are outside of the jurisdiction of the Justices of the Peace Review Council.

For the reasons noted, this complaint was dismissed and this file was closed.

CASE NO. 23-009/12

The complainant attended before the subject justice of the peace and indicated that he was acting as a representative for a defendant who was "incapable of representing one self".

He alleged "a gross case of professional Malpractice" on the part of the presiding justice of the peace. He alleged that His Worship:

- Failed to deal with the matter before the court;
- Compelled him to answer the question whether or not he was being paid for his appearance, which the complainant feels is a violation of his right to function in the court system on behalf of an individual who can't represent oneself;
- Tried to disqualify the complainant's qualifications; and,
- Stated that he would not have the complainant standing in his court, leaving the matter unresolved.

The committee reviewed the complaint letter and ordered and reviewed the transcript as well as the audio recording of the court appearance.

Following its review of the court record, the committee found that the audio recording showed that His Worship was calm, polite and professional in asking questions of the complainant in order to determine whether he had standing in the court to appear as agent for the defendant. It was noted that His Worship allowed the complainant to speak to the issue and also invited the prosecutor to make submissions before making a ruling. The committee found His Worship's questioning of the complainant to be appropriate in considering the requirements established under the Law Society of Upper Canada's bylaws for agents and paralegals. His Worship asked questions to determine whether the complainant was a licensed paralegal or whether he was able to appear under an exception to the licensing requirements on the basis that he was acting as a friend of the defendant, rather than being professionally retained and paid. The correctness of His Worship's decision that the complainant did not have standing to appear was a matter of law outside of the jurisdiction of the Council. The committee found no evidence of judicial misconduct on the part of His Worship in his handling of the situation.

For the aforementioned reasons, the committee dismissed the complaint and closed its file.

CASE NO. 23-010/12

The complainant filed a complaint about the justice of the peace arising from the withdrawal by the Crown Attorney of a private information which the complainant had sworn against one man.

The complainant stated in her letter that "I want actions taken against [justice of the peace]. I want to know under what basis she decided to withdraw my case, when I know everything can be proved." She alleged that her case was not taken seriously. She stated that Her Worship "did not even inquire me, the victim, about what happened. But when the accused did not show up for court she allowed his wife to be there, whereas for the victim, who was ruined by the accused and his wife, victim was not even questioned about the case." She stated that, "I believe that [justice of the peace] was bribed...".

She also alleged that the justice of the peace:

- In the appearances throughout 2010 and 2011 did not ask for her;
- Did not receive disclosure from the victim or ask the Crown Attorney for documents that had been received from the complainant;
- Allowed the accused's wife to appear for him;
- Do not call on the complainant even after receiving disclosure;
- Did not ask the police if he had spoken to her;
- Gave the decision without inquiring on any matters immediately after receiving disclosure when the Crown Attorney said to withdraw the charge;
- When the Crown Attorney was "teasing me" in front of the accused and in front of the Court, did not question it and allowed it;
- Looked at racism because if the complainant were white, she would have been called to court;
- Withdrew the case immediately when the Crown Attorney told her to, even when she had not looked at the disclosure.

The committee reviewed the complaint letter and reviewed the transcript of the court appearance in question.

Following its investigation, the committee found that, with the exception of allegations of racism and bribery by Her Worship, the allegations related to procedural or legal issues outside of the jurisdiction of the Council.

In its review of the court record, the committee found no evidence of racism or bribery. The committee found that the allegations of racism and bribery appeared to be based on speculation. The transcript did not support such allegations.

Nor did the transcript support the allegation that the justice of the peace permitted the Crown Attorney "to tease" the complainant in court. Rather, the Crown Attorney put on the record the reasons for his decision to withdraw the case.

With respect to the complainant's statement that Her Worship gave the decision to withdraw the charges without receiving disclosure or making further enquiries, the committee noted that it was the responsibility of the Crown Attorney to decide whether the case should proceed and it was the prerogative of the Crown Attorney to withdraw the charges. This prosecutorial discretion is not ordinarily reviewable by the courts.

The committee found that the transcript showed that the Crown Attorney requested that the charges be withdrawn on the basis that his review indicated there was no prospect of conviction. He informed the court that he had reviewed the allegations and the police had investigated the claims made and determined that the allegations were "entirely fabricated and no charges were laid". The Crown Attorney further indicated that he had conducted a thorough review and agreed that "there is absolutely no doubt that the allegations of this young woman are entirely baseless, the result of her involvement in an on-going dispute between this man and a former business partner". The Crown Attorney also indicated that he would be meeting with Police Services to review and determine what criminal charges might be brought against the complainant.

The question of whether an accused must appear in person or whether he could send his wife to represent him was a question of law outside of the jurisdiction of the Council.

After careful review, the committee found no evidence of misconduct on the part of Her Worship in her involvement in this court matter.

For those reasons, the committee dismissed the complaint and closed its file.

CASE NO. 23-011/12

The complainant filed a complaint about the presiding justice of the peace after her attendance before Her Worship in Intake Court to "review a red light camera offence".

The complainant alleged that "immediately upon my attempt to discuss the ticket, [the justice of the peace] began rolling her eyes at me". The complainant stated that Her Worship did not make eye contact, looked down at the copy of the offence notice and "her response to me was indicative of preconceived notions regarding such red light offences, clearly indicating to me that she was not listening to anything I had to say." The complainant indicated that she was pleading guilty with an explanation and expressed that "it only seems appropriately just and professional to be acknowledged in this endeavour." She alleged that Her Worship "in no way represented a fair and respectful process. Her actions were rude and unbecoming of someone whom we address as Justice of the Peace."

The committee reviewed the complaint letter and ordered and reviewed the transcript, as well as the audio recording of the court appearance.

Following its review of the court record, the committee found that the audio recording showed that Her Worship's tone was measured and even throughout the appearance. The committee found no evidence of rudeness or unbecoming conduct on the part of Her Worship. With respect to the allegation that Her Worship rolled her eyes at the complainant, the committee was not in a position to make a determination on that allegation. With respect to the allegation that Her Worship did not make eye contact with the complainant, but continued to look down at the copy of the offence notice, the committee observed that Her Worship's comments suggested that she was looking at and explaining the photograph taken by the camera at the intersection.

With respect to the allegation that Her Worship's response to the complainant was indicative of preconceived notions regarding red light offences, and indicated that she was not listening to the complainant, the committee found that the record showed that Her Worship appeared to listen to the complainant and she responded according to the issues raised by the complainant before registering a conviction and imposing a fine. The committee observed that Her Worship frequently interjected to provide comments to try to explain the nature of the offence. The committee could understand how the complainant perceived that the justice of the peace had a pre-conceived notion regarding red-light offences. However, the committee found that overall the record did not support a finding that Her Worship had

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pre-decided the matter or that she was not listening to what the complainant said. Nor did the committee find that the justice of the peace was unfair or disrespectful.

The committee observed that although justices of the peace have a duty to assist self-represented defendants, they must be careful not to be perceived as providing advice. However, the committee noted that it might have been helpful if Her Worship had provided more information to the complainant to explain that for absolute liability offences, the mental state of the defendant is deemed irrelevant. The prosecutor only has to prove that the act was done. As well, it may have been helpful if Her Worship had explained in more detail that if the complainant actually believed that she was innocent and had a defence to the charge, the plea of guilty could be struck and the matter could be set for trial. More information could have been provided in response to the complainant's questions about the total amount she would have to pay to help her better understand that a justice of the peace imposes the fine and any additional costs are not within the control of the justice of the peace. Court costs are an amount that is added for administration costs. The costs are authorized by Section 60 of the *Provincial Offences Act* and the amount is set by regulation. The victim fine surcharge is imposed by the Provincial Government and is added to every fine imposed under the *Provincial Offences Act*, other than parking fines. The amount of the Victim Fine Surcharge is variable, and is based on the amount of the set fine. Proceeds from the surcharge are used to maintain and expand provincial services to victims of crime. The committee concluded that while it may have been preferable for Her Worship to provide the additional explanations and information to the complainant, the failure to do so was not judicial misconduct.

For the aforementioned reasons, the committee dismissed the complaint and closed its file.

CASE NO. 23-012/12

The complainants, a father and son, filed a complaint about the presiding justice of the peace arising from the son's trial on a *Highway Traffic Act* charge for not properly wearing a seatbelt. The father was acting as his son's agent during the trial.

The complainants indicated that they were recording the proceeding with a handheld digital recorder. It was alleged that Her Worship insisted that they were not allowed to record the proceedings and a court bailiff took the device. It was indicated that police attended

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the court in order to check with the father and a pastor who was with him, forcing them to produce their cell phones to ensure that no other recording devices were being used. The complainants alleged that no law or regulation was cited to support Her Worship's decision to disallow recording the proceedings. The complainants asserted that Her Worship knowingly violated the law. The complainants indicated that they had filed a complaint with the Office of the Independent Police Review Director regarding the court bailiff.

The complainants raised issues about incomplete disclosure being provided by the police and prosecutor, and alleged that Her Worship denied the son full disclosure. They also took issue that the court appearance was being held in a different location from where the offence occurred and alleged that Her Worship violated procedure in "forcing attendance at an out of area court that does not serve the area the accused was ticketed in."

According to the son, during the trial, Her Worship and the prosecutor "kept stonewalling my father in his questioning, provoking him so that it detracted from his ability to fairly question and present the evidence so that a fair verdict to all the facts could be delivered." The son alleged that this led to voids and errors, compounded by the fact that Her Worship was "apparently more concerned with going home by four o'clock p.m., voiced and demonstrated by her actions that she didn't intend on being there, nor the trial proceeding past that hour." The complainants questioned "how can anyone have a fair hearing and impartial trial, when it was clearly stated by a supposed fair and impartial judge, that the trial 'will not proceed after today.'" It was alleged that Her Worship imposed and pressured "a time limit on the trial duration, thus hurrying the proceedings and in process again denying the accused to a fair and impartial trial."

Further, the complainants expressed that Her Worship "ruled with complete disregard for the physical build of the accused" and made "... arbitrary statements not based on fact, but on mere conjecture calculated to discredit and dismiss expert witness evidence written by two major automobile manufacturers.." that showed the son couldn't wear a seatbelt properly. The complainants also alleged that the law was not constitutional and that the son had suffered gross constitutional violations, a violation of his rights and of Ontario statutes. The complainants alleged that the evidence and arguments that were presented to the court were disregarded by Her Worship.

The complainants characterized the trial as a "disgraceful farce perpetrated in the trial that was in my view, a gross violation of rights", "a fiasco", "a farce pseudo trial without full disclosure provided", in which the father was pressured to move the proceedings along, "disallowing the legal right of the defence to record proceedings and conjecture on the part of the judge in making her decision in direct disregard to ALL the facts of the defence case."

The complainants requested "an investigation, and redress for this injustice at the hands of what we see as a rogue court operating outside of the law". They sought to have all charges against the son dropped.

In the Review Council's acknowledgement letter to the complainant, Council's jurisdiction was explained, clarifying that it has no authority to order a new trial or other legal remedies. It was clarified that the Council's review will be with respect to Her Worship's conduct and behaviour.

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint letter and requested and reviewed the complete transcript. The committee listened to portions of the audio recording of the trial before Her Worship.

After careful review, the committee found that the court record failed to support the allegations made. Although Her Worship could have explained that under section 136 of the *Courts of Justice Act*, recording in a courtroom is prohibited without the authorization from the presiding judicial official, the committee was satisfied that she handled the issue of recording in an appropriate manner and explained that an official record was being made by the court reporter. The committee noted that if the complainants disagreed with Her Worship's decision to disallow recording, the proper way to proceed was through legal remedies in the courts.

The committee found no reference in the court record with respect to the complainant's concerns about the court location for the trial being different from the location of the offence.

With respect to the disclosure issue, the record confirmed that Her Worship appropriately dealt with the issue about the officer's notes when raised, and offered a brief recess for the missing notes to be provided and reviewed before continuing with the trial. It was noted that the complainant sought no other remedies other than the missing portion of the notes and continued his questioning. In response to the complainants' concerns about being pressured and hurried through the trial, the record failed to support their allegations. The committee noted that Her Worship did mention the time and how late the court usually sits; however, she allowed full questioning and submissions to be made. The committee found no evidence that Her Worship was rushing the proceedings. The committee noted that Her Worship did interrupt the father's questioning at times; however, it was observed that her interjections were made, not to "stonewall" him but, to direct questioning to essential elements of the offence. The committee noted that a justice of the peace has a responsibility to keep court operating efficiently and in this case, Her Worship was trying to keep the focus of the trial and evidence on relevant information.

The committee noted that if the complainants disagreed with how Her Worship assessed the evidence and applied the law, the proper way to proceed was through legal remedies in the courts. The Council has no jurisdiction over such matters.

For the above reasons, the committee dismissed the complaint and closed its file.

CASE NO. 23-014/12

It was alleged that a justice of the peace allegedly "made a false statement under oath or under an equivalent affirmation" in a proceeding.

The complaint was assigned to an investigating complaints committee.

After careful consideration and review of the transcript, the committee was of the view that the transcript of the statements demonstrated that His Worship had made two incorrect statements with respect to the date of an event. In a later answer, His Worship stated that he could not comment on the date. The committee found that when read in the entire context provided, there was insufficient evidence that His Worship deliberately attempted to mislead the tribunal or intentionally provided false information in the proceedings. The committee dismissed the complaint.

CASE NO. 23-015/12

The complainant attended before the subject justice of the peace in Intake Court in relation to a Red Light charge that arose during a time when his son had possession of the complainant's car. He indicated that he was a retired civil servant who had serious health issues.

The complainant did not challenge the fact that he, as the owner of the vehicle, was fully liable for the cost of the fine but his complaint "concerns solely the humiliating and impolite way I was treated by the justice of the peace." He wished to appear before the court to explain the circumstances as he had never had a moving violation in over sixty years of driving and "was concerned about pleading guilty in an unqualified manner." He advised that when he appeared before the justice of the peace, he presented his concerns and proof that he was out of the country at the time of the offence. He alleged that "she totally ignored this information and refused to look at proof I was away." He further alleged that Her Worship "questioned in a curt, rude manner as to why I was present, given that I had a Government pension (retired Public Servant) and lived in a condo." The complainant stated that although she reduced the fine, "it was a humiliating and unpleasant experience for me." He indicated that, "in hindsight, I wish I had paid full fine and not appeared before her." He stated that she was "obviously rushed but that does not give her the right to be impolite and rude." He urged the Council to listen to the audio recording of the verbal exchanges.

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint letter and requested and reviewed the transcript and audio recording of the complainant's attendance before Her Worship.

After careful review of the court record, the committee found no evidence that Her Worship was rushed, curt, impolite or rude, as alleged. The committee found that Her Worship was helpful, pleasant and patient in allowing the complainant the opportunity to speak to his matter. The court record demonstrated that Her Worship was careful to explain the steps to be taken to properly receive the plea and to ensure that the complainant was pleading guilty voluntarily, that he accepted the facts of the offence and that he understood that he was giving up his right to a trial.

The committee found that the record reflected that in determining the amount of fine to be imposed, Her Worship questioned the complainant about his personal state of affairs and finances. The committee noted that for a justice of the peace to consider whether to reduce a fine, a defendant needs to provide information to demonstrate whether there are exceptional circumstances to support a reduction, such as whether the defendant is on a fixed or limited income, whether they own or rent their home, and whether they are supporting any dependants.

The committee observed that Her Worship's questions of the complainant were personal in nature, and could understand that he found the process to be humiliating and unnecessarily probing. However, the committee concluded that the questions appeared to be relevant to the issue of determining whether there were exceptional circumstances to support a reduction in the fine. The committee noted that although Her Worship could have explained to the complainant why it was necessary to ask these personal questions, her failure to do so did not amount to misconduct.

For the reasons set out above, the complaints committee dismissed the complaint and closed its file.

CASE NO. 23-018/12

The complainant was a justice of the peace who filed a complaint about another justice of the peace arising from two incidents. The complainant alleged that he was treated in a disrespectful, accusatory and demeaning manner and stated that he was of the view that his work environment was poisoned by the conduct and responses of the other justice of the peace, who was the subject of the complaint, when he raised his concerns to her.

The complainant said that the first incident occurred at an educational conference for justices of the peace. He alleged that the subject justice of the peace addressed him in a loud, insulting and demeaning manner in front of his colleagues about a policy related to scheduling of justices of the peace. He alleged that the manner in which he was addressed in front of two of his colleagues caused him embarrassment and humiliation. He considered her treatment of him to be unprofessional and a violation of the *Ontario Court of Justice's Discrimination and Harassment Policy for Judges and Justices of the Peace*.

The complainant included with his complaint correspondence that he had written to the subject justice of the peace and her responses to him. The second occasion was referenced in that correspondence. He had requested a personal meeting with the subject justice of the peace. He wrote objecting that a third justice of the peace was at the meeting at the request of the subject of the complaint, and the complainant was not informed in advance that she would be there. As well, his letter indicated that the subject of the complaint told him at the meeting to stop making an audio recording of the meeting. The letters indicated that the discussion at the meeting related to scheduling and to whether the complainant had refused an assignment.

He stated in his letter to the Review Council that he was not seeking punitive measures.

He was seeking an acknowledgement by the subject justice of the peace that she had related with him in an inappropriate and unacceptable manner and he wanted an apology. He stated that he sought an intervention by the Council to address his concerns in a remedial and positive way.

The committee noted that the *Ontario Court of Justice's Discrimination and Harassment Policy for Judges and Justices of the Peace* is not a policy administered by the Review Council. Rather, the policy was established by the Ontario Court of Justice. It provides a mechanism whereby the Court can receive and deal with complaints that judicial officers may have about the conduct of other judicial officers. The policy provides a voluntary process whereby a judicial officer who considers that he or she has been subjected to discrimination or harassment can bring forward a complaint to a Co-Chair of a panel of Advisors and in accordance with the policy, a process has been established to provide for mediation between the parties. Use of the policy is voluntary. The Court's policy and the mechanisms established under it are separate from the complaints process of the Review Council.

With respect to the first incident alleged by the complainant, following the review of the complainant's letter, the investigating complaints committee retained the services of independent external counsel to conduct interviews of the two witnesses who were identified by the complainant as being present.

The committee found that the observations of the two witnesses supported the position of the subject of the complaint that there was no heated or loud conversation between the complainant and the subject justice of the peace. Neither witness heard any conversation or observed anything that would imply they were having a heated discussion. The committee concluded that there was a discussion between the two justices of the peace at the educational seminar but it was not overheard by their colleagues who were sitting at the same table.

The committee noted from the correspondence enclosed with the complaint letter that the subject justice of the peace had indicated to the complainant that she was sorry that the complainant was embarrassed as a consequence of the conversation at the conference and that it was not her intention to cause him embarrassment. She also confirmed that when he had notified her of his embarrassment, she had spoken with a colleague who had been present to ascertain whether anything was heard. In the letter, she had assured the complainant that nothing was heard.

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With respect to the second incident, the complaints committee noted that the third justice of the peace in attendance was a local administrative justice of the peace, who assisted with and must be aware of scheduling issues, in order to be informed and effective in that role. The committee concluded that this meeting related to matters of administration and management of the court, which are matters outside of the jurisdiction of the Review Council.

For the above reasons, the committee concluded that there was no judicial misconduct, dismissed the complaint and closed its file.

APPENDIX B

POLICY ON EXTRA-REMUNERATIVE WORK AND APPLICATIONS CONSIDERED

Note:
This version of the procedures reflects decisions of
the Review Council up to December, 2012.
For current procedures, please see the Review Council's website at:
www.ontariocourts.ca/ocj/jprc/policies-and-procedures/
extra-remunerative-work/

APPENDIX B

Policy on Extra-Remunerative Work Applications

POLICY OF THE JUSTICES OF THE PEACE REVIEW COUNCIL RE: EXTRA-REMUNERATIVE WORK

CRITERIA & PROCEDURE FOR APPROVAL

1) Effective January 1, 2007, all justices of the peace, whether presiding or non-presiding, are required to seek the written approval of the existing Justices of the Peace Review Council before accepting or engaging in any extra-remunerative work, in accordance with section 19 of the *Justices of the Peace Act,* as amended January 1, 2007.

s. 19; subs. 8(2)(e)

2) All such applications to the Justices of the Peace Review Council will be considered by the Review Council at the earliest possible opportunity and the justice of the peace will be advised of its decision, in writing.

Application Procedure

3) An application for such approval must be made by the justice of the peace to the Justices of the Peace Review Council, in writing, prior to accepting or engaging in other extra-remunerative work and must set out a detailed explanation of the activity for which approval is sought, an estimate of the time commitment required and the amount of the remuneration. The applicant must also address in his or her letter each of the criteria indicated below that will be considered by the Review Council.

4) This application must be accompanied by a letter from the relevant Regional Senior Justice of the Peace providing his or her opinion with respect to any concerns about potential impacts related to scheduling and the applicant's assignment of duties.

5) The Council looks at two aspects in relation to remuneration associated with the work. Firstly, the Council considers whether the work gives rise to any remuneration

to the applicant justice of the peace. Secondly, the Council considers that a justice of the peace is engaged in extra-remunerative work when that justice of the peace is a party to someone else's remunerative work. Once the Council has established whether there is any remuneration, the policy and criteria set out in the Council's Extra-Remunerative Policy are considered.

6) The following are some of the criteria which should be addressed by the applicant in the letter of application and which will be considered by the Review Council in assessing whether or not approval will be granted:

   a) whether there is an actual, or perceived, conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought;*(examples of potential conflict of interest include: employment by government in any capacity related to the administration of justice, the courts or corrections, engagement in the practice of law, employment in a legal clinic or a law firm, etc.)*

   b) whether the nature of the activity for which the justice of the peace seeks approval will present an intrusive demand on the time, availability or energy of the justice of the peace and his or her ability to properly perform the judicial duties assigned;

   c) whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

The Council has noted that the criterion in paragraph c) above must be understood in the context of the public policy encapsulated in the legislative framework set out in the *Justices of the Peace Act* R.S.O. 1990, c. J.4, as amended and, in particular, in view of the amendments that resulted from the *Access to Justice Act,* 2006, S.O. 2006, c. 21. The amendments brought about a comprehensive reform intended to strengthen public confidence in a professional bench and in the justice system.

Having carefully considered the public policy underlying the current legislative framework, the objectives of the amendments underlying the *Access to Justice Act,* 2006, and the *Principles of Judicial Office of Justices of the Peace of the Ontario*

Court of Justice, the Review Council has determined that it would in general be unseemly for full-time presiding justices of the peace to be engaged in commercial extra-remunerative work.

The Review Council has approved some applications to extra-remunerative work by full-time presiding justices of the peace on an exceptional basis in limited circumstances where the activity was primarily non-commercial and had other intrinsic value from an educational, patriotic, religious or creative standpoint. In accordance with the Council's procedures, an applicant who seeks approval to engage in commercial activity should address the issue of why the application for extra-remunerative work should be approved as an exception to the general policy that full-time presiding justices of the peace should not engage in extra-remunerative work that is commercial in nature.

Additional Information

7) If upon its review of the application, the Review Council is not satisfied that there is sufficient information, the Review Council may request such additional information as the Review Council may deem necessary and relevant, including information from the justice of the peace, the Regional Senior Justice of the Peace or any other person.

Approval of Application without Conditions

8) If, upon its review of the application and any additional material, the Review Council is satisfied that there is sufficient information to approve the application, without conditions, the Review Council will approve the application. The applicant justice of the peace will be advised in writing of the decision of the Review Council, including brief reasons for the decision.

Opportunity to Respond to Concerns

9) If, upon its review of the application and any additional information, the Review Council has concerns about granting the application, the Review Council will provide a letter to the applicant justice of the peace setting out its concerns. The Review Council may also suggest conditions of approval to address those concerns.

10) The justice of the peace will be given an opportunity to respond to the concerns of the Review Council and to respond to any suggested conditions by sending submissions in writing to the Review Council. If the justice of the peace agrees with the conditions, he or she should respond to the Review Council confirming his or her agreement with the approval being contingent upon the conditions.

11) The justice of the peace will be given thirty calendar days to respond from the date of the letter from the Review Council expressing its concerns. If a response is not received from the applicant justice of the peace within that time, the Review Council members considering the request will be notified and a reminder letter will be sent to the justice of the peace. If no response is received within ten calendar days from the date of the reminder letter, the Review Council will proceed in the absence of a response.

Decision

12) The Review Council will consider the response of the justice of the peace, if any, in making its decision. The justice of the peace will be advised in writing of the Review Council's approval of the application and of the conditions, if any, upon which the approval is contingent. In the alternative, the justice of the peace will be advised in writing that the request has not been approved. Brief reasons will be provided for the decision.

No Authority to Order Compensation for Legal Costs

13) The Review Council does not have legislative authority to recommend or order compensation for costs of legal services incurred as a result of an application for extra-remunerative work.

Application Process in Private

14) Any meeting of the Review Council regarding applications for extra-remunerative work shall be conducted in private. Pursuant to section 8(18) of the *Justices of the Peace Act,* the Review Council has ordered that any information or documents relating to any meeting of the Review Council to consider an application to engage in extra-remunerative work are confidential and shall not be disclosed or made public.

subs. 8(18)

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Policy on Extra-Remunerative Work Applications

Quorum of Review Council

15) The usual rules for composition and quorum apply to meetings for the purposes of considering applications for extra-remunerative work. The Chief Justice of the Ontario Court of Justice, or in his or her absence, the Associate Chief Justice Co-ordinator of Justices of the Peace, shall chair meetings held for the purposes of considering applications for extra-remunerative work. Six members of the Review Council, including the chair, constitute a quorum for the purposes of dealing with an application for approval of extra-remunerative work. At least half of the members present must be judges or justices of the peace. The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

subs. 8(7),(8) and (11)

Annual report

16) After the end of each year, the Review Council shall make an annual report to the Attorney General on its affairs including a summary of each application for approval of extra-remunerative work received or dealt with during the year and the decision of the Review Council, but the report shall not include information that might identify the justice of the peace or the Region in which he or she presides.

subs. 9(7)

Amended at Toronto, June 4, 2010.

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APPLICATIONS FOR APPROVAL OF EXTRA-REMUNERATIVE WORK IN 2012

Applications for approval of extra-remunerative work are given File names starting with ER indicating the nature of the application, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., File No. ER-001/12 was the first application for approval in calendar year 2012).

Names of applicants are not included in the case summaries.

CASE NO. ER-23-001/12

The Review Council received an application from a justice of the peace who sought approval to be a guest lecturer for two university courses on resolving conflict and mediation. Her Worship indicated that she would also be a co-facilitator for an evening during the course. The Review Council sought further information about the application. Her Worship confirmed that she had waived receipt of any fees and would not be receiving any remuneration for her services. A person whom she would be assisting would be remunerated for his work.

In the circumstances, based on the understanding that Her Worship would be receiving no remuneration for teaching or guest lecturing, and that she would receive no benefit from the remuneration paid to another person who would teach the course, the Review Council determined that the activities would be provided in a volunteer capacity without any remuneration. Such volunteer activities, being without any remuneration to the justice of the peace, would not fall within the jurisdiction of the Review Council to consider.

The justice of the peace was informed that if at any point she were to decide that she wished to accept remuneration for the activities, she would be required to make an application for approval to engage in extra-remunerative activities. The Review Council reserved the right to revisit the request should any relevant circumstances change.

Policy on Extra-Remunerative Work Applications

CASE NO. ER-23-002/12

The Review Council received an application from a justice of the peace who sought approval to teach two courses at a community college. The review Council confirmed that the Regional Senior Justice of the Peace supported the request. The Review Council approved the request, subject to the following conditions:

1) Any remuneration accepted for these services must be the same as that paid to other instructors without regard to the position of a justice of the peace.

2) The availability of the justice of the peace to instruct must not impact upon his availability to fulfill his primary responsibilities as a justice of the peace during assigned hours. As such, his availability to instruct must be undertaken at times when he is not otherwise assigned to judicial duties and where he requested either vacation or compensating time off. Council was of the view that non-presiding days should not be used for such purposes.

3) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

CASE NO. ER-23-003/12

The Review Council approved a request from a *per diem* justice of the peace to teach a weekly evening language class in an Aboriginal language and how the language is spoken. The approval was granted in this instance recognizing that Her Worship was a *per diem* justice of the peace and that this would be an educational activity. The Council's approval was subject to the following conditions:

1) The Council's approval of the request must present no difficulties in fulfilling judicial assignments during the period of the teaching.

2) Her Worship's availability to instruct must be subject to her primary responsibilities as a justice of the peace and as such must be undertaken at times when she is not otherwise assigned to judicial duties.

Policy on Extra-Remunerative Work Applications

3) Her Worship must maintain distance in the completion of the teaching of this course from her role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to her judicial position in her extra remunerative work activities.

4) Her Worship could accept remuneration for these services, but such remuneration must be the same as that paid to other instructors and be without regard to the position as a justice of the peace.

5) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

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APPENDIX C

PRINCIPLES OF JUDICIAL OFFICE OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

> *"Respect for the Judiciary is acquired through the pursuit of excellence in administering justice."*

PRINCIPLES OF JUDICIAL OFFICE OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

PREAMBLE

A strong and independent judiciary is indispensable to the proper administration of justice in our society. Justices of the peace must be free to perform their judicial duties without fear of reprisal or influence from any person, group, institution or level of government. In turn, society has a right to expect those appointed as justices of the peace to be honourable and worthy of its trust and confidence.

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

The following principles of judicial office are established by the justices of the peace of the Ontario Court of Justice and set out standards of excellence and integrity to which all justices of the peace subscribe. These principles are not exhaustive. They are designed to be advisory in nature and are not directly related to any specific disciplinary process. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in the conduct of their personal lives.

APPENDIX C

Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

1. THE JUSTICE OF THE PEACE IN COURT

1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.

Commentaries:

Justices of the peace should not be influenced by partisan interests, public pressure or fear of criticism.

Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

1.2 Justices of the peace have a duty to follow the law.

Commentaries:

Justices of the peace have a duty to apply the relevant law to the facts and circumstances of the cases before the court and to render justice within the framework of the law.

1.3 Justices of the peace will endeavour to maintain order and decorum in court.

Commentaries:

Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

2. THE JUSTICE OF THE PEACE AND THE COURT

2.1 Justices of the peace should approach their judicial duties in a spirit of collegiality, cooperation and mutual assistance.

2.2 Justices of the peace should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court.

2.3 Reasons for judgment should be delivered in a timely manner.

2.4 Justices of the peace have a duty to maintain their professional competence in the law.

Commentaries:

Justices of the peace should attend and participate in continuing legal and general education programs.

2.5 The primary responsibility of justices of the peace is the discharge of their judicial duties.

Commentaries:

Subject to applicable legislation, justices of the peace may participate in law related activities such as teaching, participating in educational conferences, writing and working on committees for the advancement of judicial interests and concerns, provided such activities to do not interfere with their primary duty to the court.

3. THE JUSTICE OF THE PEACE IN THE COMMUNITY

3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.

3.2 Justices of the peace must avoid any conflict of interest, or the appearance of any conflict of interest, in the performance of their judicial duties.

Commentaries:

Justices of the peace must not participate in any partisan political activity.

Justices of the peace must not contribute financially to any political party.

3.3 Justices of the peace must not abuse the power of their judicial office or use it inappropriately.

3.4 Justices of the peace are encouraged to be involved in community activities provided such involvement is not incompatible with their judicial office.

Commentaries:

Justices of the peace should not lend the prestige of their office to fund-raising activities.

APPENDIX D

HEARING RE JUSTICE OF THE PEACE ERROL MASSIAH

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APPENDIX D

Public Hearing Re:
His Worship Errol Massiah

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF A HEARING
UNDER SECTION 11.1 OF THE JUSTICES OF THE PEACE ACT,
R.S.O. 1990, c. J.4, as amended,

Concerning a Complaint about the Conduct of
Justice of the Peace Errol Massiah

Before: The Honourable Justice Charles H. Vaillancourt, Chair

Her Worship Louise Rozon

Dr. Michael Phillips, Community Member

Hearing Panel of the Justices of the Peace Review Council

Reasons for Decision

Counsel:

Mr. Douglas C. Hunt, Q.C. Mr. Andrew Burns Hunt Partners LLP	Mr. Eugene Bhattacharya Barrister and Solicitor
Presenting Counsel	Counsel for His Worship Errol Massiah

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APPENDIX D

Public Hearing Re: His Worship Errol Massiah

BAN ON PUBLICATION OF COMPLAINANTS' AND WITNESSES' IDENTITIES

[1] Justice of the Peace Errol Massiah appeared before this Panel in relationship to a number of allegations from staff members at his court location that are alleged to constitute judicial misconduct.

[2] Since the allegations involve sexual misconduct or sexual harassment, the Panel, on June 6, 2011, ordered a publication ban of information that might identify the complainants or witnesses in this hearing pursuant to Section 11.1(9) of the *Justices of the Peace Act*, R.S.O., c. J.4 as amended.

INTRODUCTION

[3] The Hearing Panel heard evidence on September 28, 29, 30 and November 9, 2011 in connection with the allegations particularized in Appendix "A" of the Notice of Hearing in this matter, dated April 11, 2011.

[4] The Hearing Panel is required to make findings of fact based on the evidence that has been adduced and thereafter determine whether the evidence establishes that the conduct of Justice of the Peace Massiah amounts to judicial misconduct.

[5] Presenting Counsel, Mr. Hunt, contends that the evidence supports judicial misconduct.

[6] Mr. Bhattacharya takes the position that the evidence demonstrates a misunderstanding between Justice of the Peace Massiah and the various members of the court staff but that his actions do not cross the threshold of judicial misconduct.

[7] In ascertaining whether judicial misconduct has been proven by Presenting Counsel, the Panel must be satisfied on the balance of probabilities.

THE EVIDENCE

First Allegation of AA Paragraph 2 of Appendix "A"

[8] **On or about July 29, 2010, AA was performing her duties as a court clerk in the Ontario Court of Justice when she attended the office of Justice of the Peace Massiah in connection with the performance of her duties. Justice of the Peace Massiah asked AA to sit down on a couch in the office and rolled his chair in front of her and said, "You have beautiful eyes and I want to gaze into them." AA said, "Your Worship" and got up to leave. Justice of the Peace Massiah said, "Don't leave" or "Don't run away". Justice of the Peace Massiah then asked Ms. AA, "What colour are your eyes? Do they have green in them?" He also asked whether her eyes changed colour with the weather. Ms. AA left the office. Later that day, in relation to the aforementioned comments, Justice of the Peace Massiah stated to AA that, "I take it you don't like compliments, you just like abuse."**

Evidence of AA on September 28, 2011.

[9] AA indicated that on the date in question, she entered Justice of the Peace Massiah's chambers in order to obtain his signature on some release papers. A normal conversation was being held between the two of them when Justice of the Peace Massiah pulled his chair in front of hers and started commenting on how beautiful her eyes were and that he wanted to gaze into them.

[10] AA advised the Panel that the comments about her eyes made her feel uncomfortable and she left the office.

[11] She also indicated that Justice of the Peace Massiah asked her whether she had green eyes or whether they turned green. AA replied that she did not have green eyes.

[12] AA stated that as she was leaving the office, she believed that Justice of the Peace Massiah said, "Don't leave" or "Don't run away". She indicated that it is possible that Justice of the Peace Massiah might have told her, "No wait, don't run." At this juncture, His Worship may have signed the paperwork which she took and did what she had to do with it.

[13] AA was not sure as to the exact timing in the day when this incident happened.

[14] AA said that when she was bringing Justice of the Peace Massiah back into court later in the day, he told her, "I take it you don't like compliments. You just like abuse."

[15] AA was taken completely off guard by this comment and advised the Panel that she didn't know how to respond to it but told Justice of the Peace Massiah, "You got me."

[16] She conceded that her response could have been interpreted by Justice of the Peace Massiah that she was responding in a jocular or funny fashion.

[17] AA acknowledged that she usually had an "okay rapport" with Justice of the Peace Massiah.

[18] AA immediately told MM, a fellow clerk, as to what had transpired and thought that MM might have said something to Justice of the Peace Massiah that prompted his last comment.

[19] She also became aware of MM's post on her Facebook page that read, "A funny thing happened at the courthouse today. Ask AA about it."

[20] AA made it very clear that she did not find the incident funny.

[21] AA also told GG what had transpired.

Evidence of KK on September 29, 2011

[22] KK advised the Panel that she recalled AA telling her that Justice of the Peace Massiah had made comments to her about her eyes in his chambers and that the way those comments were said made her uncomfortable.

[23] KK suggested that AA tell someone about the situation. AA responded, "It's my word against his word and no one's going to believe me."

Evidence of MM on September 29, 2011

[24] MM confirmed that AA told her about Justice of the Peace Massiah looking or gazing into her eyes on the day that it happened.

[25] MM found the incident to be hilarious and made reference to the situation on her Facebook page. MM advised the Panel that she guessed that her take of the situation as opposed to AA's was based on the fact that she (MM) is not as easily offended as other people. Likewise, she stated that she never had any problem with Justice of the Peace Massiah's bantering.

Evidence of GG on September 29, 2011.

[26] GG confirmed that AA told her about an incident wherein Justice of the Peace Massiah asked AA to have a seat on the couch. Justice of the Peace Massiah then wheeled his chair over to her location and said, "You have beautiful eyes. I could gaze into your eyes all day." These comments made AA uncomfortable. The next time AA went to bring Justice of the Peace Massiah into court, he said, "What, you don't like a compliment, you prefer abuse?"

[27] GG was a court clerk trainer and advised the Hearing Panel that in the past she had warned other clerks about inappropriate comments on the part of Justice of the Peace Massiah. She indicated that these comments were usually directed towards younger and more submissive clerks.

[28] GG found Justice of the Peace Massiah to be a friendly person.

Evidence of Justice of the Peace Massiah on September 30, 2011

[29] Justice of the Peace Massiah indicated that on the day in question, he had noticed that AA was crestfallen and in low spirits. He thought that he would say something that was uplifting.

[30] He stated that he asked her to sit for awhile and asked her how she was. AA sat on the couch and Justice of the Peace Massiah turned his chair and faced her. By this time, Justice of the Peace Massiah noted that AA seemed more relaxed and jovial.

[31] Justice of the Peace Massiah admitted that he told her, "You've got nice eyes." "You've got beautiful eyes." "Look, look, they are changing colours."

[32] Presenting Counsel, Mr. Hunt, put the following suggestion to Justice of the Peace Massiah, namely,

> " But didn't , didn't a little alarm bell go off in your head at that point that I'm commenting on her eyes and calling them beautiful and talking about them changing colour? Didn't an alarm bell go off that, you know, this is the sort of stuff that sexual or gender based harassment is made of, personal comments on people's body features? Didn't it sort of kick in?"

[33] Justice of the Peace Massiah responded, "No sir. Um, AA has nice eyes."

[34] Justice of the Peace Massiah denied that he made any comment about gazing into AA's eyes.

[35] Justice of the Peace Massiah acknowledged that he noted that AA was a little taken aback by his comments but he did not discern any discomfort on her part. She then smiled.

[36] Justice of the Peace Massiah agreed that there had been some papers that he signed although the timing of their presentation varies with that of AA.

[37] He also recalled calling her back to retrieve the papers and using the expression "hold on".

[38] Justice of the Peace Massiah denied that he used any phrase about running away.

[39] Justice of the Peace Massiah denied that he made any comment about abuse.

Second Allegation of AA Paragraph 3 of Appendix "A"

[40] On a day several months earlier in 2010, AA exited an elevator at the courthouse with a colleague. As they walked towards a courtroom, they passed Justice of the Peace Massiah and said hello. At that time, Justice of the Peace Massiah came up to AA, grabbed her hand and said, "Hey girl." AA and her colleague continued into the courtroom.

Evidence of AA on September 28, 2011

[41] AA stated that on the date in question she and HH were getting off the elevator when Justice of the Peace Massiah said, "Hey girl." He then reached out or grabbed her hand.

[42] AA and HH continued on their way. Once they were in the courtroom, AA said that HH asked her if Justice of the Peace Massiah had grabbed her hand and AA said that he had.

[43] In cross-examination, AA conceded that the physical contact was more like a hand-graze.

Evidence of HH on September 29, 2011

[44] HH advised the Panel that she remembers AA telling her something about Justice of the Peace Massiah either holding her hand or grabbing her hand. However, HH indicated that she does not remember being with AA when the incident happened.

Evidence of Justice of the Peace Massiah on September 30, 2011

[45] Justice of the Peace Massiah confirmed that he reached out his hand towards AA to shake her hand. He further stated that he does not believe that she saw him or that she was in the process of looking away with the result that his hand touched her hand as they passed one another.

Third Allegation of AA Paragraph 4 of Appendix "A"

[46] **On a day in 2009, AA had occasion to enter Justice of the Peace Massiah's office in order to get him to sign some papers. There was another male Justice of the Peace present. When AA entered the office, she noticed that Justice of the Peace Massiah was either buttoning or unbuttoning his shirt. AA apologized for interrupting and was told by Justice of the Peace Massiah, "Okay, if anytime you want to see me with my shirt off just let me know."**

Evidence of AA on September 28, 2011

[47] AA indicated that sometime during 2009 she attended at Justice of the Peace Massiah's office to get some paperwork signed. When she entered the room, she noticed another Justice of the Peace present but cannot remember the name of that

Justice of the Peace. At the same time, she observed Justice of the Peace Massiah either buttoning or unbuttoning his shirt. AA said, "Oh, I'm sorry Your Worship". Justice of the Peace Massiah responded, "That's okay. Anytime you want to see me with my shirt off, just let me know."

[48] AA did not respond to Justice of the Peace Massiah. However, she indicated that she told a number of people about the incident. She cannot recall the names of those individuals now.

[49] AA stated that she did not report this incident to her superiors because she was afraid that she would not be believed because she was just a clerk and he was a Justice of the Peace. Furthermore, she did not feel that anything would happen to her and she had no real safety concerns. Nevertheless, AA said that she felt uncomfortable about the comment.

Evidence of Justice of the Peace Massiah on September 30, 2011

50) Justice of the Peace Massiah advised the Panel that he recalled the incident in question. He indicated that when AA came to his office he said that he would be right there. Justice of the Peace Massiah said that there may have been some banter between him and a colleague about his muscles.

51) Presenting Counsel, Mr. Hunt, seemed taken aback about Justice of the Peace Massiah's contention that there was another Justice of the Peace present at this time. Mr. Hunt referred Justice of the Peace Massiah to his response that he made to the Review Council in February of 2011 regarding this allegation and Justice of the Peace Massiah agreed that he did not mention any comments about his muscles to someone else.

52) Justice of the Peace Massiah stated that his recall about the muscle comment to a colleague came to him the night before he testified at this hearing.

53) Justice of the Peace Massiah categorically denied any suggestion that he said, "That's okay, anytime you want to see me with my shirt off, just let me know."

First Allegation of BB Paragraph 5 of Appendix "A"

54) **In May of 2010, BB was walking down a secure hallway in the courthouse. Justice of the Peace Massiah hurried to catch up with her and told her she looked attractive. Later on the same day, BB was in a small photocopy room in the basement of the courthouse when Justice of the Peace Massiah blocked the doorway and said, "I will make sure you get out by 4:30. You must have a date because you look so good."**

Evidence of BB on September 28, 2011

[55] BB indicated that in May of 2010 she was in her training phase of becoming a court clerk. She was instructed to bring Justice of the Peace Massiah into court. She went to his office and once she was aware that he had seen her she began to walk towards the courtroom. BB stated that Justice of the Peace Massiah seemed to catch up with her quickly and made some comment as to how attractive she looked. BB made no response to the comment and continued into court. She indicated that she felt horrible about the remark.

[56] BB acknowledged that the word was "something to the effect of how attractive I looked that day. I can't remember if attractive was the exact word."

[57] BB advised the clerks that she had been working with about what had happened to her. She was upset about the comment.

[58] Later in the day, during a recess, BB was photocopying some material. Justice of the Peace Massiah was at the door of the photocopy room and made a comment about making sure that she got out at 4:30 for a good time because being dressed like she was, she must have a date.

[59] BB informed her mother of the comments later the same day.

[60] BB was of the opinion that everyone treated Justice of the Peace Massiah's behaviour like it was a joke.

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Evidence of HH on September 28, 2011

[61] HH who was BB's trainer recalled that BB had made some comment but was unsure of exactly what was said and was unaware whether the comments disturbed her or made her feel awkward.

Evidence of JJ on September 29, 2011

[62] BB's mother confirmed that her daughter had told her about the comments regarding how she was dressed and that her daughter seemed upset about the events.

[63] BB's mother told her daughter that she had to put a stop to the inappropriate conduct but her daughter seemed to take the position that the other clerks were there longer than she was and nobody was doing anything about it.

Evidence of Justice of the Peace Massiah on September 30, 2011

[64] Justice of the Peace Massiah seemed very aware of the comments regarding BB's appearance when he was originally introduced to her.

[65] It should be noted that in the transcript of the his evidence Justice of the Peace Massiah wrongly identifies BB as FF but there is no question that his evidence is related to BB's allegation.

[66] Justice of the Peace Massiah stated that:

> "A clerk was presented [to] me. Heather, the training clerk, brought FF [actually referring to BB], who in my view was exceptionally well dressed. I'm speaking about high heels and very, dressed to the nine's, and I was told that this clerk will be ... is in training and would be my clerk for the day. So, I welcomed her and I said, "You look lovely."

[67] Justice of the Peace Massiah further commented in his evidence that,

> "... I'm picturing this because I can see it live. I recall it so well, so vividly ... I welcomed her as a member of the team and we spoke a little about who she was and her involvement now in the court system or in the work that she would be doing with me."

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[68] Justice of the Peace Massiah maintained that his comment was meant to uplift BB.

[69] Presenting Counsel, Mr. Hunt, asked Justice of the Peace Massiah,

> "And again, did it not sort of give you pause that when you start to make comments about how people look and whether they're lovely or not lovely, that you're getting into areas that are sort of the subject matter of harassment and discrimination?"

[70] Justice of the Peace Massiah responded to Mr. Hunt's suggestion, thusly,

> "I'm not aware that a compliment, sir, or complimenting someone can amount to or is, based on the way you seem to be defining is harassment, sir."

[71] Justice of the Peace Massiah advised the Panel that court had finished around 4:30 p.m. and he advised all of the staff that,

> "Good news. It looks like we are done early. All right, so even those who've got a date, those who've got this, those who've got that, I believe you can make it happen."

[72] He stated that the aforementioned comments were not directed specifically towards BB but rather at the collective group of staff members.

[73] Justice of the Peace Massiah categorically denies that he ever stood in the doorway of the photocopy room when BB was in it.

Second Allegation of BB Paragraph 6 of Appendix "A"

[74] **On a day in July of 2010, Justice of the Peace Massiah approached BB who was sitting alone in the cafeteria at the courthouse and placed his hand on her arm while asking her how she was doing.**

Evidence of BB on September 28, 2011

[75] BB was sitting by herself in the cafeteria area at the courthouse in June or July 2010 waiting for some friends to join her.

[76] BB said that Justice of the Peace Massiah walked by her and placed his hand on her shoulder and back or something and said something to her. In cross-examination, she conceded that Justice of the Peace Massiah may have asked her how she was doing and put his hand on her arm.

[77] She rejected the idea that the contact was a mere brush. She stated that the contact lasted for a couple of seconds.

[78] BB felt "really uncomfortable" especially in light of the preceding incident.

Evidence of JJ on September 30, 2011

[79] BB's mother advised the Hearing that her daughter told her about Justice of the Peace Massiah coming up from behind and putting his hand on her back and rubbing it.

[80] She described her daughter as being upset as a result of this encounter.

Evidence of Justice of the Peace Massiah on September 30, 2011

[81] Justice of the Peace acknowledges that as he was walking by BB in the cafeteria and that he tapped her lightly on the hand and asked her how she was doing.

First Allegation of CC Paragraph 7 of Appendix "A"

[82] **On a day in November 2009, CC was the court clerk in bail court. She attended Justice Massiah's office in connection with her duties. Justice of the Peace R. was present in the office. His Worship R. commented that he had heard that congratulations were in order. Justice of the Peace Massiah asked why and CC responded that she was thirteen weeks pregnant. Justice of the Peace Massiah laughed and said, "I know what you were doing thirteen weeks ago." As he said this, he nudged CC with his elbow.**

Evidence of CC on September 28, 2011

[83] CC stated that she went to get Justice of the Peace Massiah in November of 2009 from the office area of the courthouse. Justice of the Peace R. was also present and indicated that congratulations were in order.

[84] When Justice of the Peace Massiah was made aware that CC was thirteen weeks pregnant, CC testified that Justice of the Peace Massiah congratulated her and once they were in the hallway area he nudged her and said, "We know what you were doing thirteen weeks ago."

[85] CC also said it was possible that Justice of the Peace Massiah may have also said, "You guys have been busy." She conceded that this comment was made in a joking fashion.

[86] CC advised that she was a little bit upset and uncomfortable by the comments but laughed them off.

Evidence of Justice of the Peace R. on September 28, 2011

[87] Justice of the Peace R. confirmed that when CC came to the office, he congratulated her and she confirmed that she was pregnant.

[88] Justice of the Peace R. then stated that Justice of the Peace Massiah said, "Well girl, I guess we know what kind of things you were doing about thirteen weeks ago." He confirmed that this comment was said in a joking manner.

[89] Justice of the Peace R. said, "I don't recall her [CC] laughing. I do recall her looking, if it's appropriate to say, askance. She looked somewhat startled."

[90] It appeared to Justice of the Peace R. that Justice of the Peace Massiah at the very least was attempting to nudge CC.

[91] Justice of the Peace R. advised the Panel that he was uncomfortable about Justice of the Peace Massiah's remark because it seemed inappropriate. Although he thought the conduct was improper, he did not raise this issue with Justice of the Peace Massiah at the time or at any later time.

Evidence of Justice of the Peace Massiah on September 30, 2011

[92] Justice of the Peace Massiah agreed that he congratulated CC about her pregnancy and said, "Congratulations." "My, you've been a busy girl."

[93] However, he denied ever nudging her or touching her or telling her, "Well girl, I guess we know what kind of things you were doing about thirteen weeks ago."

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[94] Justice of the Peace Massiah reluctantly seemed to concede that, if the aforementioned utterance had been made, it would amount to a sexual comment. Whether the remark has any place in the workplace was never clearly answered by Justice of the Peace Massiah. The following questions and answers between Presenting Counsel, Mr. Hunt, and Justice of the Peace Massiah highlight the issues:

> Q. And you'd agree with me that kind of remark would, it can only be a sexual remark, right?
>
> A. Inferences could be there...
>
> Q. Yes?
>
> A. Yes.
>
> [......]
>
> Q. Did they both [referring to CC and Justice of the Peace R.] misinterpret something you said?
>
> A. In my reality and my opinion, sir, yes. It's all subject to interpretation, sir.
>
> Q. And would you agree with me that that kind of remark has no place in a workplace situation?
>
> A. If it was said, yeah, in the manner which you wish to convey it, sir, it perhaps could be troublesome, yes.
>
> Q. Troublesome? It's totally inappropriate, isn't it?
>
> A. I hesitate to comment on what a term appropriate can be construed in that context, sir. I wouldn't know.
>
> ......
>
> Q. But would you agree with me, a pregnant woman shouldn't have to have comments made in a workplace about a sexual incident that led to her becoming pregnant?
>
> A. Sir.

Q. That's just not right, is it?

A. That's a presumption, sir, and I, I, I'm concerned that it's being fashioned in the sense that statement was stated, sir.

Q. Alright.

A. It was not.

[95] Justice of the Peace Massiah advised the Panel the when he used the term "girl" there may be some cultural aspect to it and it was intended as a salutation encompassing the idea of "what's happening" or "how are things?" There was no intention to demean the recipient. No one had ever suggested to him that the phrase might not be an appropriate form of address. Justice of the Peace Massiah volunteered that upon reflection, he would not continue using the expression.

Second Allegation of CC Paragraph 8 of Appendix "A"

[96] **On other occasions, Justice of the Peace Massiah made CC uncomfortable by commenting on how she was dressed, how her hair looked and by eyeing her up and down and gawking at her.**

Evidence of CC on September 28, 2011

[97] CC indicated that it was not uncommon for Justice of the Peace Massiah to comment about her appearance.

[98] She indicated that other girls made references to Justice of the Peace Massiah eyeing them up and down. However, she did not associate this type of conduct with her.

Third Allegation of CC Paragraph 9 of Appendix "A"

[99] **On or about March or April of 2010, CC was working in the Intake Court area. While she was leaning over the desk of KK speaking to her, Justice of the Peace Massiah walked by and gave her a slap on the buttocks.**

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Evidence of CC on September 28, 2011

[100] CC gave evidence that she was leaning over a cubicle talking with a colleague. This position would have caused her posterior to stick out a bit.

[101] CC stated that she noticed Justice of the Peace Massiah going by and felt a tap on her bottom. Justice of the Peace did not say anything.

[102] CC conceded that the incident could have been a mistake but the situation made her uncomfortable.

[103] CC advised KK, the person with whom she had been speaking, and said, "I think he just slapped my ass."

[104] CC stated that, "I think I questioned in my mind if it could have been a mistake, if it could have been an accident, if it could have been done intentionally. I wasn't sure."

[105] In cross-examination, CC agreed with Mr. Bhattacharya's suggestions as to the possibility that any contact could have been accidental. The following exchange demonstrates the complainant's view of the matter:

> Q. [You] agree with me today, that if there was a touch by His Worship Massiah, it could have been accidental, correct?
>
> A. I do agree with that. I thought it could have been [accidental] but I also thought that if he knew he hit me, he possibly could have turned and said, "Oh, I'm sorry'. But, nothing was said. So, I just thought, I think he did it on purpose.
>
> Q. Or the other option is that if he didn't realize that he had had contact with you, it could have been something in his hand, it could have been part of his body that he didn't realize was in contact with you?
>
> A. That could be possible as well.

Evidence of KK on September 29, 2011

[106] KK confirmed that CC had stated that Justice of the Peace Massiah had touched her bottom and that she seemed very uncomfortable.

[107] KK asked CC whether it wasn't just a case of Justice of the Peace Massiah trying to get around her and the garbage cans and the recycling bin.

Evidence of Justice of the Peace Massiah on September 30, 2011

[108] Justice of the Peace Massiah stated that he has no recollection of seeing CC in the circumstances that she described.

[109] He conceded that if he had walked by the situation as described he may accidently have had incidental contact with CC without realizing it.

[110] Justice of the Peace Massiah also described his manner of walking as brisk in accordance with his military background.

Allegation of DD Paragraph 10 of Appendix "A"

[111] **During 2009, DD was working as a court clerk with Justice of the Peace Massiah. At the conclusion of the court proceedings, DD attended Justice of the Peace Massiah's office with paperwork that required Justice of the Peace Massiah's signature. The door was ajar and DD knocked and was told to come in and asked why she was knocking. DD explained that she wanted to make sure that Justice of the Peace Massiah was "decent". Justice of the Peace Massiah responded that, "It is not like you haven't seen anything like that before. Mine is just brown."**

Evidence of DD on September 28, 2011

[112] DD stated that on a day in the winter of 2009 after 5 p.m., she went to Justice of the Peace Massiah's office to get some paperwork signed. The door was ajar and she rapped on it.

[113] Her evidence was that at this point Justice of the Peace Massiah asked why she had knocked and she said that she wanted to make sure that everyone was decent. It was at this time that she said that Justice of the Peace Massiah said, "Well, it's not like you haven't seen anything like that before, except mine is brown." DD took this to mean his genital area.

[114] She was shocked by the comment. She put down the paperwork and left and told LL and EE about the incident.

[115] In cross-examination, DD agreed with Mr. Bhattacharya's suggestion that, "[Justice of the Peace Massiah's] normal demeanour or attitude outside of court was that he was friendly and fairly relaxed and joking with court staff."

[116] Likewise, DD also agreed with counsel's suggestion that Justice of the Peace Massiah could have been joking but she emphatically stated that she did not take it that way.

[117] Counsel put the proposition to DD that Justice of the Peace Massiah said, "It's not like anything you haven't seen before, there's my gown." DD categorically rejected this suggestion.

[118] DD stated that she did not report the incident because she did not want to make waves in the workplace.

Evidence of LL on September 29, 2011

[119] LL confirmed that DD told her about the aforementioned incident although she cannot recall whether the descriptor was brown or black.

[120] LL advised the Panel that her recollection was very vague as to what the exact words that were said and that she could only remember the gist of her conversation with DD.

[121] She remembered that DD was upset.

Evidence of Justice of the Peace Massiah on September 29, 2011

[122] Justice of the Peace Massiah was uncertain whether DD asked if he was decent.

[123] He does recall that on the day in question he invited DD into his chambers and conveyed that he was almost done.

[124] Justice of the Peace Massiah absolutely denied that he said, "It's not like you haven't seen anything before. Mine is just brown."

[125] Mr. Bhattacharya did not put to Justice of the Peace Massiah that he said, "It's not like anything you haven't seen before. There's my gown." Nor did Justice of the Peace Massiah volunteer this possible utterance in his testimony.

[126] Justice of the Peace Massiah suggested that DD misinterpreted him when he said, "I'm almost done."

First Allegation of EE Paragraph 11 of Appendix "A"

[127] **In September or October of 2009, EE was working as a court clerk in a bail court in which Justice of the Peace Massiah was presiding. As EE was walking by, she said good morning and Justice of the Peace said, "Damn girl, you look fine. Where did that figure come from?" EE responded, "I don't know Your Worship. I have two kids."**

Evidence of EE on September 28, 2011

[128] EE and Justice of the Peace Massiah had a chance meeting in a hallway at the courthouse in 2009 and he stated, "Damn girl, where did that figure come from?"

[129] EE replied, "I don't know. I've had two kids Your Worship."

[130] EE advised the Hearing that she was shocked and couldn't believe that the comment was said. She did not find the remark amusing. She allowed that the remark might be viewed as complimentary by some but she found that the comment made her very uncomfortable.

[131] Though she considered the remark inappropriate, she had been reluctant to make a formal complaint because she did not want to start the ball rolling.

[132] In cross-examination, counsel elicited the following information from EE's original statement of August 25th, 2010 wherein she advised the interviewer that, "It (the comment) didn't bother me at the time, but I knew it was out of order." Furthermore, she stated that he was 'a creepster' and I will not be wearing that outfit again."

[133] EE acknowledged that she was aware that several employees referred to Justice of the Peace Massiah as 'a creepster'.

Evidence of Justice of the Peace Massiah on September 30, 2011

[134] Justice of the Peace Massiah stated that he had worked with EE on many occasions and complimented her, "if she was attired in [a] particular way or anything of sorts. I would simply say that she looked nice that day or looked lovely or something to that effect."

[135] Justice of the Peace Massiah acknowledged that he made the remark in question but it had been intended as a compliment and that EE said, " Thank you, Your Worship, I have two children."

[136] Justice of the Peace Massiah did not observe any degree of discomfort being displayed by EE as a result of his comment.

Second Allegation of EE Paragraph 12 of Appendix "A"

[137] On other occasions at the courthouse, you commented to EE, "Hey girl, you look fine." "Hey girl, you look good today." and "Oh, look at you, pregnant and you still look good."

Evidence of EE on September 28, 2011

[138] EE stated that when she was pregnant with her last child, Justice of the Peace Massiah said something along the lines of, "So pregnant and still so beautiful."

[139] This remark made EE uncomfortable.

[140] She indicated that she did not report this incident because, "[she] was frightened. I just didn't want to be … he's superior. He was a Justice of the Peace. I couldn't … I just didn't know what to do, so I just kept my mouth shut."

Evidence of Justice of the Peace Massiah on September 30, 2011

[141] These remarks were not addressed by Justice of the Peace Massiah in his evidence except in the most general sense in the following question and answer segment:

Q. And did you ever compliment her?

A. Yes, I have.

Q. How?

A. Ah. By simply indicating to her that, ah, that, ah, she was . . . if she was attired in a particular way or anything of sorts, I would say she looked nice that day or looked, ah, lovely or something to that effect. I don't specifically reference the words that...

First Allegation of FF Paragraph 13 of Appendix "A"

[142] **On a day in 2008, FF was working as a clerk in Justice of the Peace Massiah's courtroom. When she attended Justice of the Peace Massiah's office, he asked, "What do clerks wear under your gowns?" He went on and said, "I could picture clerks not wearing anything under their gowns."**

Evidence of FF on September 28, 2011

[143] FF stated that she was working as a clerk in 2008 and was outside one of the courtrooms with Justice of the Peace Massiah when he made a comment along the lines of, "What do you wear under your gowns?"

[144] FF could not remember the exact context or what her response was but she said that Justice of the Peace Massiah also stated, "I think you girls shouldn't be wearing anything under your gowns. I can picture you wearing nothing under your gowns."

[145] This exchange made FF uncomfortable but she did not report the situation because Justice of the Peace Massiah was a person in authority.

Evidence of Justice of the Peace Massiah on September 30, 2011

[146] Justice of the Peace Massiah recalls an animated discussion between staff members with respect to the issue of robes. He recalls a general conversation regarding what was worn under the robes and hearing FF state her preference. Whereupon, Justice of the Peace said, "Well, I cannot picture that change ... to the effect that I could not see the dress code changing to accommodate what she was saying."

[147] Justice of the Peace Massiah did not notice any discomfort on the part of FF.

Second Allegation of FF Paragraph 14 of Appendix "A"

[148] **Several months later, FF was with Justice of the Peace Massiah outside a courtroom when he said to her, "You ladies always look so nice." FF responded that if it was up to her she would prefer to be in a sweater and a tee shirt because it was more comfortable. Justice of the Peace Massiah said, "I can picture you changing." He then paused appearing to picture her changing. He then said, "Hold on a second ... hmm, okay, I'm ready to go in now."**

Evidence of FF on September 30, 2011

[149] FF believes these comments were made after the preceding allegation but cannot be sure of that fact.

[150] On this occasion, FF said that Justice of the Peace Massiah commented that, "You ladies always look so nice."

[151] FF responded to this by stating that if it were up to her she would be in sweat pants and a t-shirt.

[152] Justice of the Peace Massiah is reported to have then said, "Hmmm. Hold on. I'm picturing something. Okay, I'm ready to go now."

[153] FF took this last statement as a reference to her changing her clothes.

[154] She then stated that she cannot remember if Justice of the Peace Massiah used the word changing. This uncertainty is demonstrated in the following exchange:

> Q. All right. So, did he make the reference to you changing clothes?
>
> A. To be honest, that's how I took it. I can't remember if that was the, his exact wording, but he had said something about he was picturing me changing or he was picturing, sorry, I'm trying to remember as best I can.
>
> A. I can't remember if he used the words changing but I remember I'm picturing something or I'm picturing you changing. That's how I took it.

[155] FF denied that the comments of Justice of the Peace Massiah had anything to do with the policy changing with respect to the wearing of gowns or that the conversation was connected with the temperatures in the courtrooms.

[156] FF indicated that Justice of the Peace Massiah never suggested meeting her outside court and there was never any touching.

[157] She described Justice of the Peace Massiah as being a fairly happy and friendly person who tried to have a sense of humour.

Evidence of Justice of the Peace Massiah

[158] Justice of the Peace Massiah stated that he was dumbfounded as to why FF would attribute this statement to him.

Additional Evidence of Justice of the Peace Massiah that is not Fact Specific to an Allegation

[159] Justice of the Peace Massiah filed a resume as part of his testimony at this hearing. This document gives a great deal of information regarding Justice of the Peace Massiah's antecedents. Of particular note, it would appear that Justice of the Peace Massiah possesses much more experience in the realm of what is appropriate and inappropriate conduct in the workplace due to his work with the Ontario Human Rights Commission and the Canadian Human Rights Commission prior to his appointment to the bench.

[160] Justice of the Peace Massiah agreed with Presenting Counsel Hunt's suggestion that harassment is behaviour that is going to be demeaning or humiliating or embarrassing to a person that on a reasonable view should have been known to have been unwelcome.

[161] Justice of the Peace Massiah repeatedly referred to his court staff as members of his team.

[162] He went to great lengths to state that he did not view his position on the bench as a position of power. Furthermore, Justice of the Peace Massiah elaborated that all the courtroom players were equal in power. He did not consider himself as "the boss".

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[163] Justice of the Peace Massiah expressed dismay that there was no written policy or understanding on the part of the staff as to how they should address perceived misconduct of a Justice of the Peace.

[164] Justice of the Peace Massiah agreed with Presenting Counsel, Mr. Hunt, that commenting on people's looks is not okay. However, he was quick to point out that, "I would say, to compliment or extend a greeting or salutation as an extension of appreciation, I think it's equally fine sir. There is a piece behind where you're inferring. There is a requirement, there's an onus on any individual to advise that person that they are either not comfortable with it, not happy with it, or do not wish to have it."

[165] What led up to these allegations becoming public? The following exchange attempts to distil Justice of the Peace Massiah's position:

> Q. But do I take it that in your view, these women were motivated or fuelled by an element of prejudgement of you, lack of tolerance of you and the way you communicated to come forward with these accounts and allegations that you say didn't happen?
>
> A. Sir. I, I, I would not hesit . . . ah, choose to comment in terms of what the motive might be, other than I can tell you, sir, which your own evidence indicates, they were collective. They spoke with each other. As to what became a group mindset and when it became a group mindset, based on what information was being fed and who said what, who was the leader of what, who could have poisoned it, who could have started it, I don't know, sir.

Evidence of witnesses called by counsel for Justice of the Peace Massiah

[166] Mr. Bhattacharya called a number of witnesses that he said might be described as character witnesses.

[167] Character witnesses are called to give evidence as to a person's general reputation in the community for honesty and integrity. Many individuals that are presented as character witnesses often do not seem to have a clear understanding as to their role. There is a tendency for character witnesses to want to give their life connection

with the person for whom they have been called. In this hearing, the character witnesses provided interesting highlights regarding Justice of the Peace Massiah's many positive attributes but the answer to the question as to his general reputation for honesty and integrity in the community was not particularly well addressed.

[168] The specific answers to the question as to his general reputation for honesty and integrity in the community include:

- I found him very professional and I have never seen any type of conduct that would suggest otherwise.
- My comment would be that he is a person of integrity, and I believe, somebody who is respected.
- He is friendly and nice.
- I've never had any problems with him. We, it's a professional relationship.
- I have no problems with that. [honesty and integrity]
- I think, from what I've seen and my interactions, friendly, professional, outgoing, very approachable type of member of the judiciary. He was flexible and accommodating for any kind of issues that we would have whether it be schedule or different activities that were going on in the court office, he was accommodating for us.
- He is well known, and as a matter of fact, many in the community were very happy, very proud, when he was appointed Justice of the Peace. He had worked with many organizations, they knew of him, so I think they look up to him as a man of integrity, a man of trust and someone of which they could be very, very proud.
- Without doubt, I trust him. I know him and I hold him in high regard and think he's a man of great integrity.

[169] Despite any frailties in the character evidence presentation, the Panel concludes that Justice of the Peace Massiah has a general reputation of honesty and integrity in the community.

THE LAW

The Role of Presenting Counsel

[170] Pursuant to section 4 of the *Justices of the Peace Procedural Code for Hearing*, established pursuant to subsection 10 of the *Justices of the Peace Act*, R.S.O. 1990, c.J.4, as amended (the "*Act*"), Presenting Counsel's duty before the Hearing Panel is not "to seek a particular order against the respondent, but to see that the complaint against the justice of the peace is evaluated fairly and dispassionately to the end of achieving a just result."

The Role of the Hearing Panel

[171] The Hearing Panel is to determine whether the evidence presented in this hearing does or does not result in a finding of judicial misconduct such that one or more of the range of dispositions set out under section 11.1(10) of the *Justices of the Peace Act* are required in order to restore public confidence in the judiciary.

The Standard of Proof

[172] The Supreme Court of Canada in *F.H. v. McDougall* [2008] 3 S.C.R. 41 set out the standard of proof that is to be applied. At paragraphs 45 and 46, the Court wrote that:

> [45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. **I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.** (Emphasis added by the Panel)

> [46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

[173] The *McDougall* case put to rest the approach that had infiltrated decisions, including professional misconduct cases, regarding the standard of proof to be applied. Lord Denning had set out a "shifting standard" test in *Bater v. Bater* [1950] 2 All E.R. 458 (C.A.) wherein the civil standard of proof (i.e. a balance of probabilities) had degrees of variance that were "commensurate with the occasion". In other words, the more serious the allegation, the closer the standard would move from the traditional civil standard of proof on the balance of probabilities to a point closer to the criminal standard of proof beyond a reasonable doubt.

[174] Mr. Justice Wake applied *McDougall* in the decision *In The Matter of a Hearing Respecting the Conduct of Justice of the Peace Paul A. Welsh,* (2009) J.P.R.C.

[175] Mr. Bhattacharya stated in his oral submissions that "I think the Supreme Court of Canada got it right [in reference to *McDougall*,] BUT …"

[176] In his oral and written submissions, counsel noted that *In the Commission of Inquiry into the Conduct of His Worship Vernon A. Chang Alloy, A Justice of the Peace*, November 9, 2009, William A. Gorewich, Commissioner, observed that:

> "The standard of proof in these matters is not as high as the standard of proof required in criminal matters, i.e. proof beyond a reasonable doubt, but requires more than simple probability. In such hearings, where serious allegations have been made and may result in the removal from office, the proof of the allegations 'must be clear and

> convincing and based upon cogent evidence which is accepted by the tribunal', such standard enunciated in *Re: Bernstein and College of Physicians and Surgeons of Ontario* (1997) 15 O.R. (2d) 477 at 485 (Ont. Div. Ct.)."

[177] A review of the *Vernon A. Chang Alloy Report* does not indicate that the *McDougall* decision had been brought to the attention of Commissioner Gorewich for his consideration.

[178] Mr. Bhattacharya seems to be less than convinced as to the direction provided by the Supreme Court in *McDougall* at paragraphs 44 and 45.

[179] The Panel does not view the *McDougall* decision as a 'conditional opinion' by the Supreme Court of Canada.

Judicial Misconduct under the Act

[180] Section 11.1(1) of the *Act* provides that the range of dispositions therein listed may be made should the Hearing Panel "uphold the complaint". While section 11.1 of the *Act* does not expressly refer to "misconduct" by the justice of the peace, section 11.1(10) is substantially similar to section 51.6(11) of the *Courts of Justice Act*, R.S.O. 1990 c. C43, the applicable legislation in respect of complaints proceedings involving judges of the Ontario Court of Justice. Section 51.6(11) provides that: "After completing the hearing, the Judicial Council may [...] if it finds there has been misconduct by the judge may [...] impose a range of dispositions that are identical to those of section 11.1(1) of the *Act*."

[181] Considering the similarity of the statutory provisions under the *Act* and the *Courts of Justice Act*, it is clear that the intent of the legislative scheme is that complaints in respect of justices of the peace are to be considered in light of whether there has been judicial misconduct, and where judicial misconduct is found to be established, the application of the range of dispositions under section 11.2(1) should be considered in the same terms as those applicable to provincial court judges.

[182] The Honourable Regional Senior Justice Kathryn Hawke in *The Matter of a Complaint Concerning the Conduct of the Peace Paul Kowarsky*, (2011) J.P.R.C., supported the aforementioned view of the legislative scheme when she stated at paragraph 6:

Neither the Section nor the *Act* elaborate upon the words "upholds the complaint" used in this Section. The Hearing Panel in *Re Welsh* (2009), a decision of the Justice of the Peace Review Council, addressed this aspect of the Section. We agree with the Panel's remarks stated at paragraph 30:

> The terms "judicial misconduct" and "upholding a complaint" are not defined in the Act; however, we agree with presenting counsel that decisions of the Canadian Judicial Council and the Ontario Judicial Council that determine whether a judge has engaged in judicial misconduct are apposite to the test we have to apply in determining whether to "uphold" a complaint (pursuant to s. 11.1(10) of the Act) and, if so, whether to apply one or more of the dispositions set out in that subsection which mirrors the same dispositions available to the Ontario Judicial Council under subsection 51.6(11) of the Courts of Justice Act, R.S.O. 1990. c. C.43 (C.J.A.).

[183] Public confidence in the justice system is a touchstone principle in the context of considering the issue of judicial misconduct. The important role of public confidence has been addressed by the Supreme Court of Canada in *Re: Therrien*, [2001] 2 S.C.R. 3 (S.C.C.) at paragraphs 108-112; and by the Quebec Court of Appeal in *Re Ruffo*, [2005] Q.J. No. 17953.

[184] In *Re: Therrien*, Mr. Justice Gonthier, at paragraph, 110 wrote:

> Accordingly, the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:

> Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simply misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in or out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.
>
> (Canadian Judicial Council, Ethical principles for Judges (1998), p.14)

[185] The Hearing Panel's reasons in *The Matter of a Complaint Respecting the Honourable Justice Norman Douglas*, (2006) O.J.C. are instructive when considering the meaning of judicial misconduct. The following passages from the decision are particularly noteworthy.

> [5] Focusing on the broad scope of s. 51.6(1*) Courts of Justice Act*, R.S.O. 1990, c. C. 43, in *Re: Baldwin* (2002), a Hearing Panel of this Council considered the meaning of judicial misconduct. In doing so, it relied on two leading decisions of the Supreme Court of Canada: *Therrien v. Minister of Justice*, [2001] 2 S.C.R. 3 and *Moreau-Bérubé v. New Brunswick (Judicial Council*), [2002] 1 S.C.R. 249. The Council stated:
>
> [...]
>
> > Paraphrasing the test set out by the Supreme Court in Therrien and Moreau-Bérubé, the question under s. 56.6(11) is whether the impugned conduct is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties

> of office or in the administration of justice generally and that it is necessary for the Judicial Council to make one of the dispositions referred to in the section in order to restore that confidence.
>
> It is only when the conduct complained of crosses this threshold that the range of dispositions under 51.6 (11) is to be considered. Once it is determined that a disposition under s.51.6 (11) is required, the Council should first consider the least serious – a warning – and move sequentially to the most serious – a recommendation for removal – and order only what is necessary to restore the public confidence in the judge and the administration of justice generally.

> [9] Accordingly, a judge must be, and appear to be, impartial and independent. He or she must have, and appear to have, personal integrity. If the judge conducts himself, or herself, in a manner that displays a lack of any of these attributes, he or she may be found to have engaged in judicial misconduct.
>
> [10] To make a finding of misconduct, the Council must be satisfied that the evidence meets the requisite standard of proof required to demonstrate judicial misconduct. In *Re: Evans*, the Hearing Panel reviewed the authorities and adopted the requirement that a finding of professional misconduct requires clear and convincing proof based on cogent evidence.

[186] The mandate of a Hearing Panel has been enunciated in *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267 (S.C.C.) at para. 68.

> The Comité's mandate is thus to ensure compliance with judicial ethics in order to preserve the integrity of the judiciary. Its role is remedial and relates to the judiciary rather than the judge affected by a sanction.

[187] The test for judicial misconduct as referenced in the preceding cases has been applied to hearings involving justices of the peace in the Province of Ontario. (See

In the Matter of a Hearing Respecting the Conduct of Justice of the Peace Paul A. Welsh (2009) J.P.R.C. at paragraph 7.)

[188] In *Re Therrien*, (supra), under the heading, The Role of the Judge: "A Place Apart", at paragraph 111, Mr. Justice Gonthier expressed the role of those performing judicial functions thusly:

> "The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens."

Principles of Judicial Office for Justices of the Peace

[189] The Justices of the Peace Review Council approved the *Principles of Judicial Office for Justices of the Peace* on December 7, 2007. The preamble to the *Principles* states that:

> "The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office."

[190] Section 3.1 of the *Principles* provides that "Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence."

[191] The Canadian Judicial Council's publication *Ethical Principles for Judges*, Catalogue Number JU11-4/2004E-PDF, ISBN 0-662-38118-1, provides assistance when considering the issue of integrity in the judicial setting. The statement under the heading, Integrity, reads,

> "Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary."

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[192] Thereafter, Principle 1 states that:

> "Judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed persons."

[193] Commentary #2 highlights the difficulty in defining integrity with exactitude. The text of the commentary reads:

> "While the ideal of integrity is easy to state in general terms, it is much more difficult and perhaps even unwise to be more specific.
>
> There can be few absolutes since the effect of conduct on the perception of the community depends on community standards that may vary according to place and time."

[194] Paragraph 99 in the *Report by the Canadian Judicial Council to the Minister of Justice in the Matter of the Review of the Conduct of the Honourable Theodore Matlow of the Superior Court of Justice* addressed the role that ethical guidelines play in evaluating a judge's conduct.

> " . . . While the *Ethical Principles* are not absolutes and while a breach will not automatically lead to an expression of concern by the CJC, much less a recommendation for removal from the Bench, they do set out a general framework of values and considerations that will necessarily be relevant in evaluating allegations of improper conduct by a judge. Therefore, the fact that challenged conduct is inconsistent with or in breach of the *Ethical Principles* constitutes a weighty factor in determining whether a judge has met the objective standard of impartiality and integrity required of a judge and in determining whether the challenged conduct meets the objective standard for removal from the Bench.
>
> For these reasons, we concluded that the Inquiry Committee was entitled to take *Ethical Principles* into account in assessing whether the conduct complained of constituted sanctionable conduct."

[195] Justices of the peace are judicial officers. They are therefore subject to the same standards of conduct as judges. The case law makes no apparent distinction.

[196] *In the Report of the Judicial Inquiry Re: His Worship Rick C. Romain* (2003) at p. 21, Justice Russell J. Otter stated:

> "Given the critically important role of the justice of the peace at the gateway to our judicial system, I am of the view that there is no reason that a justice of the peace should not be held to the same high standard of conduct as all other judicial officers."

Alleged Conduct: Notice of Hearing Appendix "A"

[197] The alleged conduct against Justice of the Peace Massiah includes words and touching.

Court Staff and the Judiciary

[198] *In the Matter of a Complaint Concerning the Conduct of Justice of the Peace Kowarsky*, the Panel noted at paragraph 16:

> [16] . . . the Panel notes the following about the employment of courtroom clerks. Courtroom clerks are employed by the Court Services Division of the Ministry of the Attorney General and not by the Ontario Court of Justice directly. There is, however, a clear working relationship between a presiding justice of the peace and a courtroom clerk as established by the *Courts of Justice Act* R.S.O. 1990, c. C.43, s. 76(2).
>
> 76.(1) In matters that are assigned by law to the judiciary, registrars, court clerks, court reporters, interpreters and other court staff shall act at the direction of the chief justice of the court. 2006, c.21, Sched. A, s.14.
>
> (2) Court personnel referred to in subsection (1) who are assigned to and present in the courtroom shall act at the direction of the presiding judge, justice of the peace, master or case management master while the court is in session. 2006, c.21, Sched. A, s.14; 2009, c.33, Sched.2, s.20(16).

[199] The Panel further observed at paragraph 36 that:

> [36] . . . , even though a courtroom clerk is not employed by the Court directly, as noted above, the courtroom clerk acts under the direction of the presiding justice of the peace in the courtroom. In order to maintain the integrity of the judiciary within this framework, the standard of conduct expected in this relationship could reasonably be expected to be analogous to that expected of someone in a supervisory capacity in a more typical working relationship.

Inappropriate Gender Related Comments and Conduct

[200] In 1996, the Ontario Rights Commission issued *a Policy on Sexual Harassment and Inappropriate Gender Related Comments and Conduct*. The *Policy* states in its introduction:

> "Freedom from sexual harassment and other forms of unequal treatment expressed through demeaning comments and actions based on gender is, therefore, a human right."

[201] A non-exhaustive list of what may constitute sexual harassment or inappropriate gender-based comments and conduct includes: (i) gender-related comments about an individual's physical characteristics or mannerisms; (ii) unwelcome physical contact; (iii) suggestive or offensive remarks or innuendos about members of a specific gender; (vi) leering or inappropriate staring; (ix) offensive jokes or comments of a sexual nature about an employee, client or tenant; (xii) questions or discussions about sexual activities; (xiii) paternalism based on gender which a person feels undermines his or her self-respect or position of responsibility.

[202] Mr. Justice Carthy of The Ontario Court of Appeal, in *Bannister v. General Motors of Canada Ltd.*, 40 O.R. (3d) 577. (Ont. C.A.), addressed the issue of a female's responsibility to demonstrate her resistance or rejection of inappropriate comments where there is a power imbalance in an employment setting at paragraph 31 when he wrote:

> " . . . It is not a question of the strength or mettle of female employees, or their willingness to do battle. No female should be called upon to defend her dignity or to resist or turn away from unwanted approaches

> or comments which are gender or sexually oriented. It is an abuse of power for the supervisor to condone or participate in such conduct."

[203] Presenting Counsel's written argument referenced several hearings in Ontario and the United States of America to illustrate findings of judicial misconduct with respect to inappropriate sexual comments and actions. The Panel has reviewed those authorities and notes that the conduct involved in those decisions differ from the findings of fact that we find in the present case and accordingly we do not propose to make comment on them except to highlight a useful passage from two of them. (See: *In the Matter of a Complaint Concerning the Conduct of Justice of the Peace Paul Kowarsky*, (2011) J.P.R.C.; *Report of a Judicial Inquiry Re: His Worship Leonard P. Blackman, A Justice of the Peace*, (1994); *Report of a Judicial Inquiry Re: His Worship G. Lenard Obokata, a Justice of the Peace*, (2003); *In the Matter of Warren M. Doolittle, a Judge of the District Court Nassau* (1985), *State of New York Commission on Judicial Conduct; In the Matter of Marvin C. Buchanan, a Judge of the District Court and Municipal Court*, (1983) State of Washington Supreme Court; *In the Matter of Mark S. Deming, a Judge of District Court No.1, Pierce County*, (1987) State of Washington Supreme Court; *Inquiry Concerning Judge John B. Gibson*, 48 Cal. 4th CJP Supp. 112 [2000] Commission on Judicial Performance; *Inquiry Concerning Judge W. Jackson Willoughby*, 48 Cal. 4th CJP Supp. 145 [June 2000] Commission on Judicial Performance.)

[204] The first quotation is from paragraph 11 *In the Matter of a Hearing of a Complaint Concerning the Conduct of Justice of the Peace Paul Kowarsky*, (2011) J.P.R.C. wherein the Panel concluded:

> [11] The sexually inappropriate comment, involving eight words, was very short. It is agreed, and the Panel finds that the comment was not intended to be hurtful. The comment involved an ill-conceived attempt at humour on behalf of His Worship. It involved using a double entendre when making what otherwise would have been an innocent request. Unlike most double entendres, however, the risqué meaning was obvious and the innocent meaning, while available in the circumstances, was obscure. Further, the risqué meaning went beyond indelicate. Given the circumstances, it was insulting and degrading."

[205] *In the Matter of Warren M. Doolittle, A Judge of the District Court Nassau (1985), State of New York Commission on Judicial Conduct*, the Commission determined that:

> "The cajoling of women about their appearance or their temperament has come to signify differential treatment on the basis of sex. A sensitized and enlightened society has come to realize that such treatment is irrational and unjust and has abandoned the teasing once tolerated and now considered demeaning and offensive. Comments such as those of [the] respondent are no longer considered complimentary or amusing, especially in a professional setting."

[206] Mr. Bhattacharya drew the Panel's attention to several of the decisions cited by Presenting Counsel that highlighted what he viewed as much more serious conduct than the circumstances facing Justice of the Peace Massiah.

[207] The Panel acknowledges that the factual findings in *Report of the Judicial Council to the Minister In the Matter of the Honourable Paul Cosgrove of the Ontario Superior Court of Justice*, March 30, 2009; *The Matter of a Hearing Respecting the Conduct of Justice of the Peace Paul Kowarsky*, (2011) J.P.R.C.; *Re Therrien*, [2001] 2 S.C.R. 3 (S.C.C.); and *Moreau-Bérubé v. New Brunswick (Judicial Council)*, [2002] 1 S.C.R. 249 (S.C.C.) are remarkably different than the facts of this hearing. Obviously, each case depends on its own findings of fact. The Panel found the authorities useful when considering how the enunciated principles regarding the judicial misconduct in each case were applied by the various adjudicating bodies to the factual findings that were before them.

[208] Mr. Bhattacharya directed this Panel's attention to *In the Matter of a Complaint Respecting the Honourable Justice Norman Douglas* (2006) O.J.C. to illustrate that even when there is clear and cogent evidence, the Panel must be satisfied that the evidence is convincing evidence of judicial misconduct. In the *Douglas* hearing, the Panel concluded that although Justice Douglas' conduct showed alarmingly poor judgment and was close to the line, it did not amount to judicial misconduct.

Public Hearing Re:
His Worship Errol Massiah

ISSUES FOR THE PANEL TO KEEP IN MIND WHEN ASSESSING THE FACTS

Staff Training and Awareness of Complaint Avenues

[209] Mr. Bhattacharya raised the issue that the clerks had not been given specific training in how to interact with the judiciary. More particularly, he pointed out they had not been instructed in how to proceed with a complaint against a member of the judiciary regarding workplace harassment.

[210] Along the same line, it was suggested that the staff had not been trained in workplace sexual harassment protocols under the Ontario Human Rights legislation.

[211] Furthermore, concern was expressed that some of the complaints before this Panel might have been subject to limitation periods under the Ontario Human Rights regime.

[212] The Panel is of the view that the aforementioned points have no particular bearing on this hearing. We agree with Presenting Counsel's submission that the issues herein are not being adjudicated pursuant to the *Ontario Human Rights Code*, R.S.O. 1990, Chapter H.19 (the "*Code*") as amended but rather pursuant to the *Justices of the Peace Act* as it relates to possible judicial misconduct. References to the Ontario Human Rights Commission, *Policy on Sexual Harassment and Inappropriate Gender Related Comments and Conduct* might very well provide assistance to the Panel when considering what constitutes harassment and inappropriate behaviour in the workplace but the recommendations as contained in the material are specific to the *Code* itself.

[213] The Panel is aided in its deliberations by the *Code's* definition of "harassment" as found in Section 10(1)(e). "Harassment" means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

[214] It should also be noted that although there is a the one-year limitation period in Section 34(1)(a) of the *Ontario Human Rights Code*, a Tribunal as constituted under the *Code*, pursuant to Section 34(2), may proceed if it is satisfied that the delay was incurred in good faith and that no substantial prejudice will result.

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[215] A number of the complainants at this hearing testified that they did not report Justice of the Peace Massiah's actions for a variety of reasons including: their belief that Justice of the Peace Massiah's conduct was treated as a joke, their newness to their workplace, they would not be believed and the embarrassing nature of the complaint.

[216] This Panel is not governed by the procedural directions of the *Human Rights Code*. However, if we were so governed, we would have allowed the complaints to proceed in the current case. The reasons for the delay in reporting combined with the fact that these allegations are not particularly dated do not put Justice of the Massiah in a prejudicial position. In fact, Justice of the Peace Massiah's evidence demonstrated his familiarity with the events in question.

Reaction to the Conduct by the Complainants

[217] Mr. Bhattacharya drew to the Panel's attention that the complainants gave no indication to Justice of the Peace Massiah as to their unhappiness with his actions and in fact often they responded in an off-handed or jocular fashion. Since there was no input given to Justice of the Peace Massiah regarding his conduct and the employees continued to work with him and did not ask for reassignment, it is suggested that he could not have known that his conduct amounted to harassment.

[218] The Panel is of the view that because of the power imbalance between Justice of the Peace Massiah and the clerks, it is not surprising that they were either mute or pretended to laugh the comments off.

[219] We are in agreement with Presenting Counsel when he observed, "It strains credulity that His Worship did not know his comments to female court staff were inappropriate." This is particularly true considering Justice of the Peace Massiah's antecedents with the Ontario Human Rights Commission and the Canadian Human Rights Commission.

Attitude and Perception That Justice of the Peace Massiah Brought to his Role

[220] Justice of the Peace Massiah advised the Panel that as part of his training, he was made aware of the important role that the clerks played in conducting a smooth-running court. He realized that to achieve a good relationship it was crucial to have a good rapport with his staff.

[221] To achieve a good working environment, Justice of the Peace Massiah often used what he believed were compliments towards the clerks. These comments included references to their physical appearance and form of dress.

[222] Justice of the Peace Massiah projected a friendly, jocular, and outgoing personality.

[223] It is clear that a fundamental belief of Justice of the Peace Massiah was that the clerks were his equal in the courthouse setting. The Panel has a difficult time understanding how Justice of the Peace Massiah could seriously believe that there was not a power imbalance between him and his clerks.

[224] It is refreshing to hear that Justice of the Peace Massiah desired to promote a team concept with the staff. However, at the end of the day, Justice of the Peace Massiah must be viewed as a person of authority. Perhaps he did not hire, promote or fire the clerks involved, but the very nature of his role and position commanded respect and obedience.

Words Used

[225] Mr. Bhattacharya argued that, unlike certain of the cases referred to by Mr. Hunt, Justice of the Peace Massiah did not use explicit sexual words. He conceded that two of the comments, if proven, could have been taken to express reference to sexual activity. Those expressions are "It's nothing you haven't seen before except mine's brown." and "I know what you were doing thirteen weeks ago." However, it is conceded that some of the words he used could be taken to infer a sexual context.

[226] Presenting Counsel noted that notwithstanding the absence of sexually explicit language, the complainants testified that they took his comments to be sexual in nature. Mr. Hunt urged the Panel to view Justice of the Peace Massiah's conduct in its totality.

Delay and Memory

[227] Mr. Bhattacharya stressed that none of the complainants made a formal complaint at or near the time of an incident.

[228] The Panel was asked to keep in mind that witnesses could not remember with exact clarity what had been said or done and that none of the complainants had made notes regarding the occurrences.

[229] Delay and memory issues are but two of the many aspects for the Panel to consider when assessing the credibility and reliability of any witness.

[230] The Panel is mindful of Mr. Justice Cory's observations regarding the benefits of early hearings of matters in *R. v. Askov*, 59 C.C.C. (3d) 449 at 475 wherein he wrote:

> "There are as well important practical benefits which flow from a quick resolution of the charges. There can be no doubt that memories fade with time. Witnesses are likely to be more reliable testifying to events in the immediate past as opposed to events that transpired many months or even years before the trial."

The Negative Reputation of Justice of the Peace Massiah that was in Play

[231] Mr. Bhattacharya drew to the Panel's attention the fact that some personnel had been given information early on that Justice of the Peace Massiah had the reputation as a "creepster". Counsel suggested that this kind of talk would create a poisoned atmosphere against Justice of the Peace Massiah.

[232] Mr. Bhattacharya was quick to point out that there were many individuals who did not subscribe to the view that Justice of the Peace Massiah was a "creepster". In fact, they viewed him in a positive light.

[233] The Panel recognizes that some of the complainants might have been aware of Justice of the Peace Massiah's negative reputation.

[234] The Panel has instructed itself regarding this possible lens through which some of the complainants might have viewed an event. However, at the end of the day, this is just another factor to keep in mind in assessing the credibility and reliability of each witness.

[235] The Panel is of the opinion that none of the complainants allowed the less than flattering reputation of Justice of the Peace Massiah to influence or taint the scenarios that they presented to the Panel.

Credibility

[236] Mr. Bhattacharya argues that his client's ability to recall specifics of some allegations was hampered by the passage of time and the delay of getting the specific particulars of the allegations that are before the Panel.

[237] In spite of the aforementioned shortcomings, Justice of the Peace Massiah seemed very capable of giving detailed accounts on most of the matters.

[238] The passage of time is recognized by the Panel as a valid explanation for forgetting or being unsure of past events. This applies to the all of the witnesses including Justice of the Peace Massiah.

[239] Fortunately, even the most distant dates before the Panel are not that long past.

[240] When credibility is being assessed, there are many factors for the trier of fact to consider. The Panel does not propose to provide an exhaustive list that might help determine the issue of credibility. However, consideration to the passage of time between the event and a witness' testimony; the ability to recall detail; the manner in which the evidence is given; whether the evidence is internally and externally consistent; motive; corroboration; variation of testimony; criminal record; whether witnesses have communicated one with the other; predisposition of a witness; disabilities, both physical and mental; possible misunderstandings; self interest; and character are but some of the tools that help in the final assessment of credibility.

[241] Once it is determined what the facts are, the question then arises as to how those facts are to be applied. Mr. Bhattacharya pressed the Panel to apply the principles in *R. v. W.(D)* , [1991] 1 S.C.R. 742, 3 C.R. (4th) 302, 63 C.C.C. (3rd) 397.

[242] *R. v. W.(D.)* is a criminal case. In David M. Paciocco & Lee Stuesser, *The Law of Evidence*, 6th ed. (Toronto: Irwin Law Inc., 2011, the authors at pages 532-3 wrote:

> ". . . By the same token, the Crown case is not made out simply because the testimony of a complainant is preferred to the testimony of the accused. The complainant's testimony, or other evidence, must establish the allegation beyond a reasonable doubt. Indeed, in a jury trial the judge must direct the jury on these matters where the accused has testified and "credibility is a central or significant issue"

The suggested instruction, often referred to as the "W.(D) warning" is as follows:

> First, if you believe the evidence of the accused, obviously you must acquit.
>
> Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.
>
> Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt of the guilt of the accused."

[243] Paciocco and Stuesser then deal with civil cases and note at page 533:

> "In a civil case, the plaintiff must establish its allegation on the balance of probabilities. Some courts and commentators have urged that the intensity of this standard varies with the matter in issue. They urge that where allegations carry increased risk or moral stigma, such as fraud, professional negligence, or sexual misconduct, courts should exercise increased caution before finding for the plaintiff. In *F.H. v. McDougall* the Supreme Court of Canada rejected this approach, saying there is only one standard and that in all cases, "the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred."
>
> **There is no equivalent to the W.(D.) warning for civil cases. W.(D.) does not translate well to the balance of probabilities standard. In civil cases, the plaintiff is entitled to win if their evidence is more credible than the defence evidence on all components of the cause of action, while the defendant will win if the defence evidence is preferred to plaintiff evidence on a necessary element of the lawsuit."**
>
> (Emphasis added)

[244] Mr. Bhattacharya's reliance on W.(D.) is misplaced and ignores the *McDougall* test.

[245] Mr. Bhattacharya advised the Panel that Justice of the Peace Massiah gave his evidence in a clear and convincing fashion. It is up to the Panel to adjudicate this issue. It is the view of the Panel that counsel's assessment of his client's performance might be a bit overstated.

[246] We found that Justice of the Peace Massiah had a tendency to try and advance an agenda when responding to questions as opposed to focusing on the questions asked. His last moment recall of the "muscles" comment was rather incredulous. His version of the pregnancy situation was contradicted by another Justice of the Peace, as well as the complainant.

[247] The complainants as a general observation presented well. They gave their evidence in a straightforward manner. They were more readily prepared to acknowledge alternative positions that often favoured Justice of the Peace Massiah.

[248] The complainants quickly relayed each incident to other staff members. Those persons who had contact with the complainants were able to confirm what they had been told by the complainants and they were in a position to make independent observations as to the emotional state of the complainants.

Justice of the Peace R.'s Lack of Communication to Justice of the Peace Massiah Regarding His Conduct

[249] Principle #2 under Integrity, from the Canadian Judicial Council's publication, *Ethical Principles for Judges*, notes that,

> "Judges, in addition to observing this high standard personally, should encourage and support its observance by their judicial colleagues."

[250] Commentaries # 6 and #7 expands upon this principle as follows:

> *Commentary #6*
>
> "In addition to judges observing high standards of conduct personally they should also encourage and support their judicial colleagues to do the same as questionable conduct by one judge reflects on the judiciary as a whole."

Commentary #7

> "Judges also have opportunities to be aware of the conduct of their judicial colleagues. If a judge is aware of evidence which, in the judge's view, is reliable and indicates a strong likelihood of unprofessional conduct by another judge, serious consideration should be given as to how best to ensure that appropriate action is taken having regard to the public interest in the due administration of justice. This may involve counselling, making inquiries of colleagues, or informing the chief justice or associate chief justice of the court."

[251] The Panel recognizes the obligation imposed upon Justice of the Peace R. under the aforementioned principles. We are aware that Justice of the Peace R. was dismayed to witness the exchange between Justice of the Peace Massiah and CC and that he did not bring his concerns to Justice of the Peace Massiah's attention. We understand that Justice of the Peace R.'s tactic was to break up the conversation as opposed to taking a strident position.

[252] The Panel does not consider what Justice of the Peace R. did or did not do to have any particular impact in determining whether the incident occurred and whether the situation amounted to judicial misconduct or not on the part of Justice of the Peace Massiah.

Effect of the Hearing on Justice of the Peace Massiah

[253] Justice of the Peace Massiah advised the Panel that he now realizes that several of the court staff did not appreciate his jocular, friendly personality that he exhibited out of court and it would be his intention in the future not to replicate his past approach.

PANEL'S FINDINGS OF FACT ON THE ALLEGATIONS

First Allegation of AA Paragraph 2 of Appendix A
(The eyes / compliments-abuse comments)

[254] Justice of the Peace Massiah conceded that he made comments to AA regarding her nice eyes and mentioned that he could see them changing colour. AA found that

these comments made her uncomfortable. Justice of the Peace Massiah admitted that although he noticed that AA was taken aback by his comments, he was of the opinion that she did not show any discomfort.

[255] The Panel accepts the evidence of AA with regard to the comment that Justice of the Peace Massiah made about wanting to gaze into her eyes.

[256] The Panel finds that Justice of the Peace Massiah also stated to AA later in the day, "I take it you don't like compliments. You just like abuse." This statement flows naturally from Justice of the Peace Massiah's recognition that AA had been taken aback and had made an immediate exit from his office.

[257] AA mentioned these events to three fellow employees on the same day that they occurred.

[258] The Panel was surprised when Justice of the Peace Massiah did not recognize that his comments about beautiful eyes and their colour change should have at least caused him to reflect upon the appropriateness of such personal comments especially in light of his prior involvement with Ontario and Canadian Human Rights Commissions.

[259] The Panel is satisfied that the allegation is made out.

Second Allegation of AA Paragraph 3 of Appendix "A" (The elevator / hey girl / hand to hand contact incident)

[260] The Panel is of the view that this allegation has not been made out.

[261] Although Justice of the Peace Massiah advised the Panel that he would desist from addressing female staff in the future with the expression "hey girl", we find that the use of the word "girl" was not intended by Justice of the Peace Massiah to be demeaning but was used by him as a friendly and informal form of address. It might very well be that the expression was culturally generated or used by Justice of the Peace Massiah after he heard fellow female Justices of the Peace address themselves in similar fashion.

[262] The handshake or quasi-handshake objectively cannot be interpreted as a form of judicial misconduct.

Third Allegation of AA Paragraph 4 of Appendix "A"
(Okay, if anytime you want to see me with my shirt off, just let me know.)

[263] The Panel finds that this event has been made out.

[264] AA did not have any safety concerns about this comment but was uncomfortable when it was said.

[265] Justice of the Peace Massiah testified that, the night before giving his testimony before this hearing, he remembered that on the day in question he was having a conversation with a fellow Justice of the Peace about his muscles. This last moment revelation contrasts to his earlier response to the Review Council where he made no mention of muscles or an independent witness to the conversation.

[266] The Panel finds that there is no air of reality to this last minute memory recovery.

First Allegation of BB Paragraph 5 of Appendix "A"
(Clerk told how attractive she was and later told she'd be out early because she must have a date because she looked so good.)

[267] The Panel finds that this event has been made out.

[268] Justice of the Peace Massiah acknowledged that when he was introduced to BB by a training clerk he complimented her by telling her that she was lovely. Even when he gave evidence at this hearing, Justice of the Peace Massiah recalled that, "she was exceptionally well dressed. I'm speaking about high heels and very dressed to the nine's."

[269] This dialogue upset BB and she reported the incident to others.

[270] Justice of the Peace Massiah considered this comment strictly in a complimentary context without any suggestion that it was any form of harassment.

[271] BB advised the Panel that later in the day when she was in the photocopy room, Justice of the Peace Massiah made a comment to her about making sure that she got out at 4:30 or a good time because being dressed like she was, she must have a date.

[272] Justice of the Peace Massiah denied making this comment to BB but acknowledged making a very similar statement to the staff at large, namely, "Good news. It looks

like we are done early. All right, so even those who've got a date, those who've got this, those who've got that, I believe you can make it happen."

[273] The Panel believes BB's evidence and rejects the evidence of Justice of the Peace Massiah.

[274] The Panel fails to see how complimenting a new employee about how lovely she looks has anything to do with welcoming her as a member of the judicial team.

Second Allegation of BB Paragraph 6 of Appendix "A" (Touching complainant on her arm while she was sitting in the cafeteria area and asking her how she was doing.)

[275] The Panel does not find that this act constitutes judicial misconduct.

[276] We have no doubt that the brief touch on the arm by Justice of the Peace Massiah was more disturbing to the complainant than one would normally expect because of the earlier interaction between BB and Justice of the Peace Massiah.

[277] However, Justice of the Peace Massiah's evidence that he briefly touched BB on the arm to get her attention and ask a simple question as to how she was doing certainly does not seem untoward.

[278] The complainant's evidence supported Justice of the Peace Massiah's recollection of the events.

[279] The complainant's mother's evidence suggested a more sinister version of events but this evidence is not compelling in light of the complainant's actual evidence at this hearing.

First Allegation of CC Paragraph 7 of Appendix "A" (Comment made to CC about her pregnancy.)

[280] The Panel finds that this allegation has been proven.

[281] Justice of the Peace Massiah denied that he nudged CC or said, "Well girl, I guess we know what kind of things you were doing about thirteen weeks ago."

[282] CC and Justice of the Peace R. stated that the words indeed were said and that the nudging motion was made or attempted. Both described Justice of the Peace Massiah's comments and actions being done in a jocular fashion.

[283] However, CC was a little bit upset and uncomfortable by the situation. Her discomfort was confirmed by Justice of the Peace R.

[284] We reject Justice of the Peace Massiah's version of the event.

[285] Justice of the Peace R. also felt uncomfortable about the exchange although he never raised the issue with Justice of the Peace Massiah.

[286] We reject Mr. Bhattacharya's suggestion that Justice of the Peace R. bears some ethical responsibility in not taking Justice of the Peace Massiah to task for his behaviour. The Panel is of the view that Justice of the Peace R. got caught up in his duties after this incident and cannot be faulted for not tracking down Justice of the Peace Massiah in order to express his opinion regarding Justice of the Peace Massiah's conduct.

Second Allegation of CC Paragraph 8 of Appendix "A"
(Comments about her dress, hair and eyeing her up and down.)

[287] The Panel does not find that Presenting Counsel has presented sufficient evidence to meet his onus with respect to this allegation.

[288] At best, there was some evidence that it was not uncommon for Justice of the Peace Massiah to make comments about her personal appearance. However, this was not developed.

[289] Nothing in direct evidence suggested that Justice of the Peace Massiah looked her up and down and gawked at her. There was some suggestion that others were subjected to this conduct but there was no evidence to bolster this position.

Third Allegation of CC Paragraph 9 of Appendix "A"
(Tap on the buttocks of CC)

[290] This allegation is viewed by the Panel to be the most serious of all of the allegations against Justice of the Peace Massiah.

[291] The Panel accepts that when Justice of the Peace Massiah went by CC as she was in conversation with a colleague there was physical contact between the two. Either Justice of the Peace Massiah's hand or papers he was carrying contacted CC's posterior.

[292] Justice of the Peace Massiah has no independent recollection of this situation.

[293] CC clearly was unsure whether this contact was accidental or on purpose.

[294] The probability of accidental contact is supported by the fact that the passageway in question is relatively narrow; Justice of the Peace Massiah walks in a brisk military fashion; and there was no indication on the part of Justice of the Peace Massiah that he was aware of any contact.

[295] The Panel finds that this allegation has not been proven on the balance of probabilities. We are of the view that any contact was unintentional and accidental.

Allegation of DD Paragraph 10 of Appendix "A"
(It's not like you haven't seen anything like it before. Mine is just brown.)

[296] The Panel finds that this allegation has been proven.

[297] DD was unequivocal about what she heard. She was shocked and upset to hear the comment. She immediately left the area and advised her colleagues of the exchange about the comment.

[298] LL confirmed that she recalls DD advising her about the event but was rather vague on exact particulars.

[299] Justice of the Peace Massiah's position is that DD misunderstood what he had said.

[300] There is absolutely no area for a misunderstanding between what is alleged to have been said by Justice of the Peace Massiah and "I'm almost done." At least in the hypothetical scenario put to the complainant by Mr. Bhattacharya, the rhyming of brown and gown might have conjured up the possibility of confusion but Justice of the Peace Massiah negates even this fanciful option by saying he never said, "There's my gown."

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Public Hearing Re: His Worship Errol Massiah

First Allegation of EE Paragraph 11 of Appendix "A" (Damn girl, where did that figure come from?)

[301] The Panel finds that this allegation has been proven.

[302] EE found the comment made her uncomfortable.

[303] Justice of the Peace Massiah admitted that he often complimented EE on her appearance and advised the Panel that this particular comment was intended as a compliment.

[304] He did not observe any discomfort on EE's part.

Second Allegation of EE Paragraph 12 of Appendix "A" (Hey girl, you look good today. Oh, look at you, pregnant and you still look good.)

[305] The Panel finds that this allegation has been proven.

[306] EE indicated that Justice of the Peace Massiah said something along the lines of, "So pregnant and still so beautiful, but that's not the exact wording. I can't say verbatim."

[307] The Panel accepts that although the exact words could not be recalled the essence of the comment is made out on the balance of probabilities.

[308] Justice of the Peace Massiah was only able to say that he recalls saying something like she looked lovely.

[309] Considering Justice of the Peace Massiah's admission in connection with Paragraph 11 of Appendix "A", it isn't a stretch to find that a statement of the nature alleged here was made as indicated by EE.

First Allegation of FF Paragraph 13 of Appendix "A" (Discussion regarding what the clerks wore under their robes.)

[310] The Panel is not satisfied that this allegation has been proven

[311] Justice of the Peace Massiah's explanation of a general discussion regarding robes and using the phrase, "Well, I cannot picture that change ... to the effect that I could not see the dress code changing to accommodate what she was saying" is a reasonable possibility.

Second Allegation of FF Paragraph 14 of Appendix "A" (Discussion by Justice of the Peace Massiah visualizing FF changing her clothes.

[312] The Panel is not satisfied that this allegation has been proven.

[313] FF's evidence was very uncertain as to whether the word "changing" was even used.

DO THE FINDINGS OF FACT AMOUNT TO JUDICAL MISCONDUCT?

[314] The Panel has found that the following allegations have been made out to the standard of proof as set out by the Supreme Court of Canada in *McDougall*:

> **Paragraph 2:** The incident involving comments about a clerk's eyes and wanting to stare into them coupled with the suggestion that the clerk would prefer abuse over compliments.
>
> **Paragraph 4:** The incident suggesting that the clerk could see the justice of the peace without his shirt by just letting him know.
>
> **Paragraph 5:** The incident involving the justice of the peace commenting on the attractiveness of a clerk who was in the training phase of her employment coupled with a further comment on her physical appearance and getting out of court for a date.
>
> **Paragraph 7:** The incident wherein the justice of the peace remarked about what a clerk had done thirteen weeks earlier that resulted in her pregnancy and giving her a nudge in connection with the comment.
>
> **Paragraph 10:** The incident when the justice of the peace stated that, "It's not that you haven't seen anything like it before. Mine is just brown."

Paragraph 11: The incident wherein the justice of the peace said, "Damn girl, where did that figure come from"?

Paragraph 12: The incident involving the statement to a clerk, "Oh, look at you, pregnant and you still look good."

[315] The Panel further finds that the aforementioned conduct amounts to judicial misconduct. It is not our intention to repeat the comments and observations regarding judicial misconduct that we have mentioned earlier in these reasons except in the most general way.

[316] The judiciary should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed persons.

[317] Do the findings of fact herein suggest conduct above reproach?

[318] It is the Panel's view that they do not. We find each allegation capable of supporting a finding of judicial misconduct on its own. We are mindful of Presenting Counsel's submission that the Panel could also view the proven allegations in their totality and that the pattern of conduct displayed would amount to a finding of judicial misconduct. We agree with this submission although, under the circumstances, it is unnecessary to act upon that approach.

[319] Each of the proven allegations on its face clearly focuses on the physical appearance and condition of the court clerks or has a sexual innuendo which caused the clerks great discomfort.

[320] The lack of official complaint or direct response by the complainants is of no moment. The common position of the complainants was, in essence, "He's a Justice of the Peace and we're only court clerks." The Panel was somewhat distressed to hear the witnesses describing themselves as subservient. This certainly contrasts with Justice of the Peace Massiah's view of the courthouse setting as a place of equality. The Panel recognizes that the reality of the situation is that there is an actual power imbalance between a Justice of the Peace and a court clerk.

[321] This imbalance certainly explains why the clerks were reluctant to complain or challenge Justice of the Peace Massiah's comments. It must also be remembered that, especially in the case of new employees, there would be a desire not to upset the applecart.

[322] Justice of the Peace Massiah's complimentary, jocular, team building view of the world does not hold up in the light of common sense and his own personal background. He had extensive experience in the realm of human rights. Certainly, he would have been aware that the kind of comments he was making were contrary to today's acceptance of appropriateness. The Panel accepts that Justice of the Peace Massiah has a friendly and outgoing manner but, at the same time, the Panel finds that the constant references to his clerks' appearances are completely inappropriate.

[323] The Panel accepts that both individually and collectively Justice of the Peace Massiah's conduct amounts to judicial misconduct.

DISPOSITION

[324] The Panel will reconvene to hear submissions from counsel with respect to an appropriate disposition in view of the findings made by this panel.

COSTS

[325] The Panel acknowledges the request by Mr. Bhattacharya that Justice of the Peace Massiah's costs for legal services incurred in connection with this hearing should be paid. The Panel invites Mr. Bhattacharya to submit a written Statement of Account and any submissions to the Panel through the Registrar.

DATED at the City of Toronto in the Province of Ontario this 1st day of March, 2012

HEARING PANEL:

The Honourable Justice Charles H. Vaillancourt

Her Worship Louise Rozon

Dr. Michael Phillips, Community Member

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE *JUSTICES OF THE PEACE ACT*, R.S.O. 1990, C. J.4, AS AMENDED,

Concerning a Complaint about the Conduct of Justice of the Peace Errol Massiah

Before:	The Honourable Justice Charles H. Vaillancourt
	Her Worship Louise Rozon
	Dr. Michael Phillips, Community Member
	Hearing Panel of the Justices of the Peace Review Council

Reasons for Decision on Disposition

Counsel:

Mr. Douglas C. Hunt, Q.C. Mr. Andrew Burns Hunt Partners LLP	Mr. Eugene Bhattacharya Barrister and Solicitor
Presenting Counsel	Counsel for His Worship Errol Massiah

APPENDIX D

Public Hearing Re:
His Worship Errol Massiah

BAN ON PUBLICATION OF COMPLAINANTS' AND WITNESSES' IDENTITIES

Justice of the Peace Errol Massiah appeared before this Panel in relationship to a number of complaints from staff members at his court location that were alleged to constitute judicial misconduct.

Since the allegations involved sexual misconduct or sexual harassment, the Panel, on June 6, 2011, ordered a publication ban of information that might identify the complainants or witnesses in this hearing pursuant to Section 11.1(9) of the *Justices of the Peace Act*, R.S.O., c. J.4 as amended.

Position of Counsel as to the Appropriate Disposition in These Matters

[1] Mr. Hunt observed that the role and duty of Presenting Counsel, as set out under section 4 of the Justice of the Peace Review Council's Procedural Code for Hearing, established pursuant to subsection 10 of the *Justices of the Peace Act*, R.S.O. 1990, c.J.4, as amended, is not "to seek a particular order against the Respondent, but to see that the complaint against the justice of the peace is evaluated fairly and dispassionately to the end of achieving a just result."

[2] This role continues into the disposition phase of the hearing and is similar to the role of Independent Counsel in respect of complaint proceedings involving Superior Court of Justice judges. In the *Report of the Canadian Judicial Council to the Minister of Justice in respect to the Honourable Paul Cosgrove* (March 30, 2009) at paragraph 54, the Panel noted that: "The mandate of Independent Counsel, it must be remembered, is not that of a lawyer retained to achieve a certain result".

[3] In his oral submissions, Presenting Counsel, Mr. Hunt, directed the Panel's attention to certain aspects of the hearing that would support a disposition at the upper range of the disposition options.

[4] Mr. Bhattacharya, on behalf of Justice of the Peace Massiah, advocated in his written submissions that the Panel consider a disposition that included a reprimand, apologies to the complainants, and appropriate education and counselling programmes. During his oral presentation, Mr. Bhattacharya conceded that the option of suspension might also be an appropriate disposition.

Possible Sanctions for Judicial Misconduct

[5] Section 11.1(10) of the *Act* provides that:

> 11.1 (10) After completing the hearing, the panel [...], if it upholds the complaint, it may,
>
> (a) warn the justice of the peace;
>
> (b) reprimand the justice of the peace;
>
> (c) order the justice of the peace to apologize to the complainant or to any other person;
>
> (d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
>
> (e) suspend the justice of the peace with pay, for any period;
>
> (f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days; or
>
> (g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2.

[6] Section 11.1(11) of the *Act* provides that the "panel may adopt any combination of the dispositions set out in [Section 11.1] clauses 10(a) to (f)".

Principles to Consider When Ascertaining Appropriate Disposition

[7] *Re: Baldwin* (2002) O.J.C. at page 6 captures the essence thusly:

The purpose of judicial misconduct proceedings is essentially remedial. The dispositions in s. 51.6(11) [which is parallel to the legislative framework that this Panel has] should be invoked, when necessary, in order to restore a loss of public confidence arising from the judicial conduct in issue.

Paraphrasing the test set out by the Supreme Court in Therrien and Berube, the question under s. 51.6(11) is whether the impugned conduct is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties of office or in the administration of justice generally and that it is necessary for the Judicial Council to make one of the dispositions referred to in the section in order to restore that confidence.

It is only when the conduct complained of crosses this threshold that the range of dispositions in s. 51.6(11) is to be considered. Once it is determined that a disposition under s. 51.6(11) is required, the Council should first consider the least serious - a warning - and move sequentially to the most serious – a recommendation for removal – and order only what is necessary to restore the public confidence in the judge and in the administration of justice generally.

[8] In respect of the most serious disposition, removal, in the *Report of the Canadian Judicial Council to the Minister of Justice in the Matter of the Honourable Paul Cosgrove* (March 30, 2009) at paragraph 19 the Canadian Judicial Council adopted the following standard:

> [19] Accordingly, it remains for Council to proceed to the second stage to determine if public confidence in the judge's ability to discharge the duties of his office has been undermined to such an extent that a recommendation for removal is warranted. In this regard, we adopt the standard identified by the Council in the *Marshall* matter and widely applied in other cases since then:
>
> Is the conduct alleged so manifestly and profoundly destructive of the concept of the impartiality, integrity and independence of the judiciary role, that the public confidence would be sufficiently undermined to render the judge incapable of executing the judicial office.

[9] The Panel has noted at paragraph 186 of our Reasons the Supreme Court of Canada decision of *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267 (S.C.C) at paragraph 68 where the court stated that:

> ...The Comité's mandate is thus to ensure compliance with judicial ethics in order to preserve the integrity of the judiciary. Its role is remedial and relates to the judiciary rather than the judge affected by a sanction.

[10] In *Re Therrien*, [2001] 2 S.C.R. 3, 2001 SCC 35 at paragraph 108 Justice Gonthier commented on the role of the judge and the manner in which the public perceives that role as follows:

> [108] The judicial function is absolutely unique. Our society assigns important powers and responsibilities to the members of its judiciary. Apart from the traditional role of an arbiter which settles disputes and adjudicates between the rights of the parties, judges are also responsible for preserving the balance of constitutional powers between the two levels of government in our federal state. Furthermore, following the enactment of the *Canadian Charter*, they have become one of the foremost defenders of individual freedoms and human rights and guardians of the values it embodies: *Beauregard*, supra, at p. 70, and *Reference re Remuneration of Judges of the Provincial Court*, supra, at para. 123. Accordingly, from the point of view of the individual who appears before them, judges are first and foremost the ones who state the law, grant the person rights or impose obligations on him or her.
>
> [109] If we then look beyond the jurist to whom we assign responsibility for resolving conflicts between parties, judges also play a fundamental role in the eyes of the external observer of the judicial system. The judge is the pillar of the entire justice system, and of the rights and freedoms which that system is designed to promote and protect. Thus, to the public, judges not only swear by taking their oath to serve the ideals of Justice and Truth on which the rule of law in Canada and the foundations of our

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democracy are built, but they are asked to embody them (Justice Jean Beetz, Introduction of the first speaker at the conference marking the 10th anniversary of the Canadian Institute for the Administration of Justice, observations collected in *Melanges Jean Beetz* (1995), at pp. 70-71).

[110] Accordingly, the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:

> Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality and good judgment.
>
> (Canadian Judicial Council, *Ethical Principles for Judges* (1998), p.14)

[111] The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens ....

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[11] When applying the aforementioned principles, one must be ever mindful that judicial officers are not perfect. Justice Mocha reminds us of that principle in her reasons in the *Report of a Judicial Inquiry Re: His Worship G. Leonard Obokata, A Justice of the Peace (2003)*, when she stated at page 6:

> It must be remembered that judicial officers are human beings with all the frailties that entails. Mistakes will be made. The question is the gravity of the misconduct and whether it is a correctible error. The magnitude of the misconduct and its effect must be weighed in light of the circumstances in which it is committed.

Factors to Consider When Assessing Appropriate Disposition

[12] It is not the intention of the Panel to repeat the findings of fact as determined in the Reasons delivered on March 1st, 2012. However, we would like to address some issues that have been addressed by counsel in their submissions.

[13] Presenting Counsel noted that Justice of the Peace Massiah did not make any admission of fact or misconduct with respect to any of the conduct alleged in the Particulars and required a full hearing in respect of each of the complainants thereby requiring the complainants to testify.

[14] The Panel recognizes that in criminal and quasi-criminal proceedings "falling on one's sword" and admitting one's liability is considered a mitigating factor when it comes to the issue of disposition.

[15] However, in the matter before us, we are of the view that it would have been most difficult to make any preliminary concessions. Credibility and reliability certainly were live issues in this hearing and it was imperative that these matters were the subject matter of examination and cross-examination.

[16] Since His Worship, Justice of the Peace Massiah, alleged possible collusion among the court staff arising from his reputation at the courthouse, it was important to assess whether or not there was the possibility of any collusion between the complainants. The hearing of evidence allowed us to conclude that in fact there was no collusion. Nor was there any improper motive on the part of the complainants.

[17] A number of the complainants had more than one allegation. It was paramount that each witness gave her evidence in a contextual package for ease of understanding.

[18] It must be remembered that at the end of the day, six of thirteen allegations were found not to be proven on the balance of probabilities. In particular, the ones alleging physical contact were found not to be proven.

[19] The Panel also recognizes that during the narrative of Justice of the Peace Massiah he did acknowledge a number of points raised by the complainants.

[20] The Panel appreciated the fact that Mr. Bhattacharya approached his cross-examination in a very professional and civilized manner thereby reducing the tension of the complainants.

[21] In assessing an appropriate disposition, the Panel must be mindful of the fact that there was more than a single incident of judicial misconduct and more than one complainant was involved and that the events occurred over a period of time.

[22] The Panel has concluded that the comments made by Justice of the Peace Massiah to the various staff members amounted to judicial misconduct. However, the conduct did not include inappropriate touching. There was never any hint that Justice of the Peace Massiah's conduct was intended by him to be taken as an invitation or suggestion for any personal interaction between the parties. Although the Panel accepts that Justice of the Peace Massiah's comments were intended by him to encourage team building and offered in a jocular fashion, it absolutely rejects that this concept has any air of reality. Comments regarding physical attributes by a person in authority to employees under their watch are unacceptable - period.

[23] It is troubling that the comments made by Justice of the Peace Massiah were made by an individual with his background with the Ontario and Canadian Human Rights Commissions. If anyone should have been cognizant of the issues that were highlighted in this hearing, it should have been Justice of the Peace Massiah.

[24] However, Justice of the Peace Massiah did not appreciate that his conduct was inappropriate and unacceptable. A question for this Panel is whether he does in fact fully understand now.

[25] Any misunderstanding that he may have had about his position of authority vis-à-vis the court staff surely has been brought home to him through this public hearing.

[26] The Panel recognizes that the public nature of this hearing in and of itself will act as a reminder that a repetition of the conduct of this nature toward court staff will not be tolerated.

[27] The Panel acknowledges that the individuals called on behalf of Justice of the Peace Massiah demonstrated that he is held in high regard in the community at large.

[28] We are confident that His Worship Massiah will not engage in this type of conduct in the future.

[29] Subsequent to the release of the Panel's Reasons, Justice of the Peace Massiah has prepared draft letters of apology to each of the complainants herein. In those letters, there is an unequivocal apology to the aggrieved parties. The Panel appreciates the fact that

[30] Justice of the Peace Massiah included letters to all of the complainants including the one complainant whose allegations we found unproven on the balance of probabilities.

[31] Justice of the Peace Massiah also attended a one-to-one remedial human rights and sensitivity training session with David A. Griffin, an independent consultant, workplace investigator and corporate trainer. A review of the report provided by Mr. Griffin was very useful. Justice of the Peace Massiah seems motivated and prepared to follow up on this counselling.

[32] The Panel does not agree with Presenting Counsel's submission that the efforts by Justice of the Peace Massiah since the release of our Reasons are too little, too late.

[33] We are of the view that Justice of the Peace Massiah's efforts are an important first step in addressing his "profound and fundamental problem" regarding the power imbalance that exits in a courthouse setting and the appropriate boundaries that must be recognized and respected regarding female staff in the work place.

[34] The Panel finds that Justice of the Peace Massiah has demonstrated his willingness to address the aforementioned concerns and is capable of rehabilitation.

[35] We accept Justice of the Peace Massiah's efforts as the beginning of an ongoing process and not the ending.

[36] Justice of the Peace Massiah has also sought out counselling from his Pastor and an e-mail from this Pastor to Mr. Bhattacharya outlines a course of counselling that should assist Justice of the Peace as he moves forward.

[37] It is noted that Justice of the Peace Massiah does not have any previous findings of judicial misconduct.

DISPOSITIONS IN OTHER MISCONDUCT CASES

[38] The Panel appreciated Presenting Counsel's efforts in compiling cases in which dispositions were made regarding judicial misconduct. These decisions assisted the Panel when it attempted to fashion a disposition that included the restoration of public confidence in the administration of justice and the guidance for the rehabilitation of the justice of the peace.

[39] In the hearing *In the Matter of the Complaint Concerning the Conduct of Justice of the Peace Paul Kowarsky*, (2011) J.P.R.C. there was a disposition of a reprimand for one occurrence of a sexually inappropriate comment.

[40] In the *Report of a Judicial Inquiry Re: His Worship G. Leonard Obokata, A Justice of the Peace* (2003) there was a disposition of suspension without pay for a period of thirty days. Justice of the Peace Obokata, while under the influence of alcohol, sexually assaulted a colleague by grabbing her breast twice on one occasion following a dinner that they had attended during a conference.

[41] In the *Report of a Judicial Inquiry Re: His Worship Leonard Blackburn, A Justice of the Peace* (1994) there was a recommendation of removal from office regarding several inappropriate comments of a sexual nature to two young women of sixteen and twenty-one years of age respectively.

[42] In the case *In the Matter of Warren M. Doolittle, a Judge of the District Court* Nassau (1985), State of New York Commission on Judicial Misconduct, a disposition of admonition was made with respect of the judge making comments to female attorneys in respect of their appearance and physical attributes.

[43] In the *Report of a Judicial Inquiry Re: His Worship Rick C. Romain, A Justice of the Peace* (2003), a recommendation for removal was made after findings of judicial misconduct on the part of the justice of the peace for (1) refusing to permit an articling student to exit his court; (2) banning an agent he deemed to be incompetent from appearing in his court; and (3) refusing to permit an accused to defend a traffic violation on the basis that he would not remove a religious head covering.

[44] In the *Report of a Judicial Inquiry Re: His Worship Benjamin Sinai, A Justice of the Peace* (2008), a recommendation for removal was made where the justice of the peace (a) refused to assist an unrepresented accused who was charged with a traffic violation but, instead, (i) advised the accused to plead guilty, (ii) chastised the accused for not knowing his rights, (iii) refused to permit the accused to comment on the facts as alleged, and (iv) failed to provide the accused with sufficient information to appropriately deal with the matter of disposition; and, (b) in circumstances where the justice of the peace took a leave of absence following the commencement of a review of the aforementioned conduct, made requests to the Regional Senior Justice of the Peace that if she could make the complaint “go away” he would return to work as his “stress level” would be reduced such that he would be able to render judgment in two outstanding matters.

THE ISSUE OF ASSIGNMENT OF JUSTICES OF THE PEACE

[45] The Hearing Panel is aware that *In the Matter of a Hearing Concerning a Complaint about the Conduct of Justice of the Peace Paul Kowarsky* (2011) the justice of the peace took the step of voluntarily having his assignment adjusted to accommodate the complainant. This was recognized by the Hearing Panel that presided over that case to be a step that assisted in restoring public confidence.

[46] However, it is to be noted that the Justices of the Peace Review Council has no jurisdiction over assignment of justices of the peace.

Public Hearing Re: His Worship Errol Massiah

DISPOSITION

[47] For the reasons contained herein, the Panel finds that the appropriate disposition in this matter to restore public confidence in this justice of the peace and in the administration of justice generally is:

(1) A reprimand of Justice of the Peace Massiah.

(2) Justice of the Peace Massiah is to forward to the Registrar the letters of apology to the complainants signed by him so that the Registrar may forward them to the complainants.

(3) We believe that the public's confidence in Justice of the Peace Massiah would be strengthened if he were to have additional counselling or judicial training that reinforces his understanding of gender sensitivity and professional boundaries. In accordance with 11.1(10)(d) of the *Justices of the Peace Act*, the Panel orders that Justice of Peace Massiah undergo specific judicial education or counselling in gender sensitivity and professional boundaries, as a condition of continuing to sit as a justice of the peace, such education or counselling as deemed appropriate by the Chief Justice or her designate.

(4) Lastly, Justice of the Peace Massiah shall be suspended without pay, but with benefits, for a period of ten (10) days.

Dated this 12th day of April, 2012.

HEARING PANEL:

The Honourable Justice Charles H. Vaillancourt

Her Worship Louise Rozon

Dr. Michael Phillips, Community Member

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